YEARBOOK ON HUMAN RIGHTS FOR 1970

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INTRODUCTION

On the occasion of the twenty-fifth anniversary of the coming into force of the Charter of the United Nations, the General Assembly of the United Nations, by resolution 2627 (XXV) of 24 October 1970, adopted a declaration by the representatives of the States Members of the United Nations, assembled at United Nations Headquarters during the twenty-fifth session of the General Assembly, entitled "Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations". The text of the Declaration, dealing *inter alia* with human rights and fundamental freedoms, appears in part III of the present *Yearbook on Human Rights for 1970.*

This twenty-fifth volume of the *Yearbook* contains material originating from Governments, government-appointed correspondents and research work done within the United Nations Secretariat. It consists of three parts. Part I describes constitutional, legislative and judicial developments in 75 States. Part II deals with information on one Trust Territory and three Non-Self-Governing Territories. Part III reproduces the texts of, or extracts from, international instruments bearing on human rights.

The year 1970 witnessed the adoption of new constitutions in Fiji, the Gambia, Morocco and the Upper Volta, and of the Charter of the Presidential Council of Dahomey. Extracts from the constitutions and the Charter are published in the present volume.

Each of the above constitutions as well as the Charter reflects certain of the principles set out in the Universal Declaration of Human Rights. Devoted entirely to the protection of fundamental rights and freedoms are chapter II of the Constitution of Fiji, chapter III of the Constitution of the Gambia and title II of the Constitution of the Upper Volta. Articles 8-12 of the Constitution of Morocco concern the protection of the political rights of the citizen and articles 13-18 the guarantee of the economic and social rights of the citizen.

Specific reference to the Universal Declaration of Human Rights is made by the Constitution of the Upper Volta and the Charter of Dahomey. The Constitution of the Upper Volta, approved by the people of the Upper Volta in the referendum of 14 June 1970, in its Preamble, solemnly proclaims the people's adherence to the principles of democracy and of human rights as set out *inter alia* in "the Universal Declaration of Human Rights of 1948". The Charter of the Presidential Council of Dahomey of 7 May 1970, in its Preamble, reaffirms Dahomey's attachment to the principles of democracy and human rights as defined *inter alia* in "the Universal Declaration of 1948 and the United Nations Charter".

Other constitutional developments during 1970 include the promulgation in Botswana of the Constitution (Amendment) Act, 1970 and in Senegal of Act No. 70-15 of 26 February 1970, revising the Constitution. The Constitution (Amendment) Act of Botswana repeals and replaces *inter alia* section 112 of the Constitution with a new section, providing that any person who has been removed from office or subjected to any other punishment under section 111 of the Constitution, may appeal to the Public Service Commission who may dismiss such appeal or allow it wholly or in part. Act No. 70-15 of Senegal repeals and replaces by a new text *inter alia* articles 21, 49 and 80 of the Constitution. Under the new articles 21, 49 and 80, the President of the Republic shall be elected by direct universal suffrage in two ballots by majority vote; members of the National Assembly shall be elected by direct universal suffrage; and the judicial power shall be independent of the legislative and executive powers while judges, in the exercise of their functions, shall be subject only to the authority of law. In Switzerland the constitutions of a number of cantons have been revised. As revised, article 88 of the Constitution of the canton of Valais gives women equal political rights with men in cantonal and commune matters; article 13 of the Constitution of the canton of Vaud extends the right to practise the Catholic faith to the entire canton; article 131 of the Constitution of the canton of Geneva provides the constitutional basis for establishing an administrative tribunal for the purpose of sageguarding the rights of individuals more effectively; article 26 *bis* of the Constitution of the canton of Glarus introduces voting by secret ballot for the election of the Council of State and of deputies to the Council of States; and article 16 of the Constitution of the canton of Zurich gives women equal political rights with men in cantonal, district and commune matters. In addition to these constitutional amendments, mention may also be made of the submission in the Netherlands in 1970 of two bills. Both were concerned with fundamental rights and intended to insert in the Netherlands Constitution *inter alia* provisions concerning electoral rights, freedom of expression, the right to demonstrate, the secrecy of telephonic conversations and the extension of the concept of freedom of religion to the freedom of belief.

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

Measures aimed at the prevention of discrimination were adopted in the Canadian provinces of Manitoba and Ontario. The Manitoba Human Rights Act of 1970 prohibits discrimination on the basis of race, colour, creed, religion, nationality, ancestry or place of origin, and the Ontario Women's Equality Opportunity Act prohibits discrimination in employment on the basis of sex and marital status. In connexion with the ratification by Finland of the International Convention on the Elimination of All Forms of Racial Discrimination, that country's Criminal Code, by Act No. 465 of 7 July 1970, has been supplemented by articles 6 *(a)* and 6 *(b)*. By virtue of article 6 *(a)*, anyone who is spreading among the public statements or announcements, threatening or affronting groups of a certain race, colour, religion, or national or ethnic origin, shall be convicted of incitement to discrimination of a group of persons and subjected to imprisonment for two years at most or to a fine. Under article 6 *(b)*, anyone engaged in an enterprise or being in the service of such a person or in a comparable position, or any official who in such a capacity does not serve a customer, on the conditions generally applicable, because of his race, colour, religion or national or ethnic origin, shall be convicted of discrimination and subjected to a fine or imprisonment for six months at most. In Norway, an amendment to the Penal Code extended the Code's safeguards against racial discrimination and cleared the way for Norway's ratification of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination.

Decree No. 4-70 of 29 January 1970 of Guatemala approves the Agreement made by an exchange of notes between the Guatemalan Ministry of Foreign Affairs and the Embassy of Italy accredited in Guatemala, permitting nationals of Italy and Guatemala to enter, stay and depart from the territory of the other country without requiring a visa. Other laws relating to the right to freedom of movement and residence include those promulgated in 1970 in Argentina: Act No. 18,653 and Order No. 14,904, both dealing with requirements to be met by "permanently resident" aliens who remain outside the territory of the Republic for periods more or less than 24 months; Finland: Act No. 456 of 7 July 1970 on Extradition; Kenya: The Law of Domicil Act, 1970; Mauritius: The Immigration Act, 1970; Norway: Act of 5 June 1970 (No. 35) concerning Extradition in order to Implement Decisions regarding the Restriction of Personal Liberty by Authorities in Another Nordic Country; and Zambia: The Refugees (Control) Act, 1970.

Legislation on the right to a nationality was adopted in 1970 in Botswana: The Citizenship of Botswana (Supplementary Provisions) (Amendment) Act, 1969, entered into force on 6 January 1970; Mauritius: The Mauritius Citizenship (Amendment) Act, 1970; Mexico: Regulations pursuant to article 57 of the Nationality and Naturalization Act; Senegal: Act No. 70-31 of 13 October 1970, amending and supplementing articles 2, 7 and 22 of Act No. 61-10 of 7 March 1961, determining Senegalese nationality; and the United Republic of Tanzania: The Age of Majority (Citizenship Laws) Act, 1970.

Concerning the legal status of a husband or a wife, article 183 of the Civil Code of Monaco (chapter VI, title V, book I), as amended by Act No. 886 of 25 June 1970, states that each spouse has full capacity and that his or her powers are limited only by the rules of the matrimonial régime and the provisions of the law. Rights relating to marriage were also dealt with in legislation adopted in Jamaica: The Law Reform (Husband and Wife) Act, 1970, article 3 of which provides that subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married; the Netherlands: the new Civil Code (effective as from 1 January 1970), in title 5 of which, dealing with marriage, the provision according to which adult persons must have the consent of their parents to marry until they reach the age of 30, has been repealed; and the United Kingdom: Matrimonial Proceedings and Property Act 1970, establishing *inter alia* the principle that financial remedies on the breakdown of a marriage are to operate in the interests of husbands and wives equally.

Provisions bearing on the right to property are contained in laws promulgated during 1970 in the Byelorussian Soviet Socialist Republic: Land Code of the Byelorussian SSR, article 3 of which, *inter alia*, provides that land is State property; Greece: Legislative Decree 797, concerning compulsory expropriation; Iraq: Agrarian Reform Law (No. 117 of 1970); Jamaica: The Law Reform (Husband and Wife) Act, 1970; Mauritius: The Holding of Lands (Restriction) Act, 1970; Monaco: Act No. 886 of 25 June 1970, concerning the capacity of the married woman, modifying the legal matrimonial régime, instituting mutability of matrimonial agreements and abrogating and amending certain provisions of codes and laws; the United Kingdom: Matrimonial Proceedings and Property Act 1970; and Zambia: The Lands Acquisition Act (No. 2 of 1970).

The Defamation Act, 1970 of Kenya concerns the right to protection against attacks upon one's honour and reputation but affects the right to freedom of opinion and expression as well since actions for slander or libel, brought under the Act, may originate from newspaper reports, wireless broadcasting and words, including pictures, visual images, gestures and other methods of signifying meaning. Other legislation relating to the right to freedom of opinion and expression includes that adopted in Algeria: Ordonnance No. 70-38 of 12 June 1970, on the reorganization of the Algerian national theatre and Ordonnance No. 70-39 of 12 June 1970, establishing general regulations for regional theatres; Bolivia: Supreme Decree No. 09113 of 20 February 1970, article 8 of which prohibits newspaper and broadcasting companies from penalizing and/or dismissing their editors or reporters for writing articles which are at variance with or contrary to the views of the company; Burundi: Law-Decree No. 1/53 of 31 July 1970, concerning the regulation of cinematographic performances, Presidential Decree No. 1/54 of 31 July 1970, concerning cinematographic performances, and Ministerial Order No. 093/121 of 28 September 1970, entrusting the Press Department with responsibility for the publication of a daily information bulletin; Mexico: Decree of 1970, approving the Agreement between the United Mexican States and the United States of America concerning radio broadcasting in the standard broadcasting band; and Sweden: Act of 5 June 1970, abolishing and replacing the provisions of the Penal Code concerning offending morality and decency by new provisions prohibiting public display of pornographic pictures and similar products, and the amendment of the Freedom of the Press Act by the insertion of provisions corresponding with those introduced in the Penal Code.

With regard to the right to freedom of peaceful assembly and association, Greece adopted in 1970 the following legislation: Legislative Decree 794, concerning public meetings and Legislative Decree 795, concerning the formation of associations and unions. Provisions on the exercise of this right may also be found in a number of laws promulgated in 1970, including The Public Order Act of Canada; The Public Order (Bar to Certain Proceedings) Decree, 1970 (No. 41 of 1970) of Nigeria; and The Emergency Powers Act, 1970 of Trinidad and Tobago.

A Swedish Royal Commission – the Integrity Protection Commission – proposed new legal provisions relating to the right to protection against interference with privacy. The provisions intended to make it punishable to obtain, or to record, by means of technical devices, any sounds emerging from a person's domicile. In the United Kingdom, a committee was set up to consider whether legislation was needed to give further protection to the individual citizen and to commercial and industrial interests against intrusions into privacy by private people and organizations or by companies. In connexion with this right to privacy, mention may also be made of Legislative Decree 792 of Greece, concerning the inviolability of private correspondence.

The United States, by the Voting Rights Act Amendments of 1970, extended to other states the prohibitions of the Voting Rights Act of 1965 regarding the use of tests or devices as prerequisites for voting and registration; abolished durational residency requirements; and reduced the voting age to 18 in federal, state and local elections. Other developments relating to the right to take part in the government of one's country include the adoption of legislation on that right in Austria: Federal Act of 27 November 1970, concerning elections to the National Council; Brazil: Act No. 5.581 of 26 May 1970, establishing regulations concerning the holding of elections in 1970 and promulgating other provisions; Congo (Democratic Republic of): Legislative Ordinance No. 70-026 of 17 April 1970, concerning the organization of elections to the legislature and Legislative Ordinance No. 70-027 of 17 April 1970, concerning the organization of the election of the President of the Republic; Hungary: Act III of 1970, amending Act III of 1966 on the Election of Members of Parliament and Members of Councils; the Netherlands: Amendment of 1970 to the Electoral Law, by virtue of which electors now are no longer bound as in the past, to present themselves at the polling station at the time of election; Spain: Decree No. 2615/1970 of 12 September of the Ministry of Government, regulating electoral campaigns for family representation councillors and Order of the Ministry of Government of 23 September 1970, establishing further regulation in pursuance of Decree 2615/1970 on electoral campaigns of family representation councillors; Switzerland: the amendment to article 26 of the Constitution of the canton of Glarus, referred to above in connexion with constitutional developments and introducing voting by secret ballot for the election of the Council of State and of deputies to the Council of State; the United Republic of Tanzania: The Elections Act, 1970; the Upper Volta: Ordinance No. 70-21 PRES.IS.DI. of 31 May 1970, establishing regulations for the conduct of the Constitutional referendum and Ordinance No. 70-37 PRES.IS.DI. of 31 May 1970, defining the official rules for the election of representatives to the National Assembly; Venezuela: Organic Law on Suffrage of 25 August 1970, under article 7 of which all Venezuelan citizens over 18 years of age, unless not subject to civil disability, have the right to vote; and Zambia: The Local Government Elections Act (Act No. 1 of 1970).

Legislation on the treatment of offenders and detainees was adopted in 1970 in Australia: The Legal Practitioners (Legal Aid) Act, 1970 (No. 37 of 1970) of New South Wales, providing for the establishment of a scheme of legal aid for persons who do not qualify for assistance under the Legal Assistance Act 1943; Canada: The Criminal Records Act of 1970, providing for the granting of pardons for criminal offences after the lapse of two or five years from the completion of punishment; Ecuador: Supreme Decree of 14 August 1970, suspending the guarantee to the right of *habeas corpus* until the country returns to the rule of law; Gabon: Act No. 6/70 on conditional release; Jamaica: The Poor Prisoner's Defence (Amendment of First Schedule) Resolution 1970; Kenya: The Indemnity Act, 1970; Luxembourg: Grand Ducal Order of 3 December 1970, concerning the administration and internal regulations of penal institutions; Uganda: The Magistrates' Courts Act, 1970, dealing *inter alia* with warrant of arrest; and Yugoslavia: Law of the Republic of Serbia of 1970, on the enforcement of sentences involving deprivation of liberty and security measures.

Provisions on the treatment of offenders and detainees are also to be found in the amendments to the existing codes of the Byelorussian Soviet Socialist Republic: Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR of 26 August 1970 on the addition of article 122^1 to the Criminal Code of the Byelorussian SSR, dealing with violation of the secrecy of adoption; Canada: the Amendment of 1970 to the Criminal Code, making it indictable to advocate or promote genocide against any identifiable group; Finland: Act No. 465 of 7 July 1970 on the supplement of the Criminal Code by provisions concerning racial and other discrimination; Guatemala: Legislative Decree No. 2164, amending the Penal Code; Norway: Act of 5 June 1970 (No. 34), amending the Penal Code of 22 May 1902, with regard to measures against racial discrimination; the Sudan: The Code of Criminal Procedure (Amendment) Act, 1970; Sweden: Amendments to the Penal Code of 27 May 1970; the Union of Soviet Socialist Republics: Decree of the Presidium of the Supreme Soviet of the USSR of 31 August 1970, amending articles 22 and 36 of the Principles of Criminal Procedure of the USSR and the Union Republics and dealing with the participation by defense counsel in criminal proceedings and committal for trial respectively; Yugoslavia: Law of 1970, modifying and supplementing the Code of Criminal Procedure; and Zambia: The Penal Code (Amendment) Act, 1970 and the Penal Code (Amendment) (No. 2) Act, 1970.

The Women's Equality Opportunity Act of the Province of Ontario of Canada, referred to above in relation to measures aimed at the prevention of discrimination, prohibits discrimination in employment on the basis of sex and marital status. In Hungary, Government Decision No. 1013/1970 aims at improving the economic and social status of women. The Law of Domicil Act, 1970 of Kenya affects the status of women in that its article 7 prescribes that a woman shall, on marriage, acquire the domicil of her husband while its article 8 provides that an adult woman shall not, by reason of being married, be incapable of acquiring an independent domicil of choice. Other legislation affecting the status of women includes that promulgated in 1970 in the Netherlands: the new Civil Code, which entered into force on 1 January 1970 and article 9 of which recognizes the right of a married woman to bear her husband's surname or to put it before her own name; Norway: Act of 22 May 1970 (No. 30), amending the Act of 20 May 1927, by which *inter alia* regulations have been introduced concerning equality between husband and wife in terms of their right to enter into legally binding private dispositions; Spain: Decree No. 2310 of 20 August 1970, to issue new regulations concerning the labour rights of women under Act No. 56 of 22 July 1961; Sweden: Decision by the *Riksdag* of 1970, introducing equality between men and women in the national health insurance; Switzerland: Revision of the Constitutions of the cantons of Valais and Zurich, giving women equal political rights with men in cantonal, district and commune matters; the Union of Soviet Socialist Republics: Principles of the Labour Legislation of the USSR and the Union Republics, article 69 of which deals with restrictions on the employment of women on night work, overtime and travelling on missions and Regulation of the Council of Ministers of the USSR of 12 August 1970, concerning the procedure for awarding and paying grants to pregnant women, mothers with many children and single mothers; and the United Kingdom: The Equal Pay Act 1970, intended to eliminate by the end of 1975 discrimination in Great Britain between men and women contained in terms and conditions of employment. Besides these legislative developments, reference may also be made to the report of the Royal Commission on the Status of Women in Canada, published in 1970 and containing recommendations aimed at encouraging and assisting greater participation and utilization of women in the Canadian society, the reconvening in the United Kingdom of the Women's National Commission to ensure that the informed public opinion of women would be given due weight in the deliberations of Government on matters of public interest, and the Programme of Concerted International Action for the Advancement of Women adopted by the General Assembly of the United Nations on 15 December 1970.

Protection of youth was a matter of concern to a number of Governments. Australia adopted the Handicapped Children (Assistance) Act, 1970; Austria: Federal Act of 30 October

1970, on the reform of the legal status of illegitimate children; Burundi: Legislative Decree No. 1/48 of 10 July 1970, concerning arrangements for the guardianship of children placed in official or private orphanages; Canada: The Child Welfare Act of Ontario which, as amended in 1970, expands the conditions under which Children's Aid Societies can assist unmarried parents and their children; the Federal Republic of Germany: Law on the Legal Status of Illegitimate Children of 19 August 1969 (entered into force on 1 July 1970); Gabon: Act No. 11/69 of 31 December 1969 (entered into force on 1 March 1970), amending Act No. 9/63 of 12 January 1963, on the maintenance obligations of the father of a child born out of wedlock; Kenya: The Law of Domicil Act, 1970, section 5 of which states that an infant who is legitimated by the marriage of his parents shall acquire the domicil of his father at the date of the legitimation; the Netherlands: the new Civil Code (entered into force on 1 January 1970), containing in its Title 11 provisions which improve the position of natural children; New Zealand: the Age of Majority Act, lowering the age of majority from 21 to 20; Romania: Regulation concerning the protection and assistance to minor children; Spain: Act No. 7/1970 of 4 July, amending Book I, Title VII, Chapter V of the Civil Code concerning adoption; Thailand: Act of 1970, establishing the Changwat Chiang Mai Children and Juvenile Court, Royal Decree of 1970, fixing the date of the opening for the administration of justice of the Changwat Chiang Mai Children and Juvenile Court and Royal Decree of 1970, establishing the Changwat Chiang Mai Children Welfare and Protection Centre; and Yugoslavia: Law of the Republic of Slovenia of 1970, concerning a cash benefit for the layette of a new-born child.

The Government of Italy, in its contribution, makes reference to Act No. 300 of 1970, more usually known as the Workers' Statute. Labour legislation was also adopted during 1970 in Australia, Bolivia, the Central African Republic, Czechoslovakia, Finland, Iraq, Jamaica, Libya, Mauritania, Mauritius, Mexico, New Zealand, Panama, the Philippines, Poland, Romania, Sweden, the Union of Soviet Socialist Republics, the United Kingdom, the United Republic of Tanzania and Yugoslavia.

In Ireland, the Social Welfare Act, 1970 introduced *inter alia* schemes of retirement pensions, invalidity pensions and death grants as part of the social insurance system. Other countries that have promulgated social legislation during 1970 include Algeria, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, Guatemala, Jamaica, Liechtenstein, Monaco, Poland, Sweden, Switzerland, the United Kingdom, Yugoslavia and Zambia.

Bolivia, by Supreme Decree No. 09177 of 14 April 1970, established a national adult literacy and education programme. Other developments relating to the right to education include the adoption of legislation on that right in Australia, Bulgaria, Chad, Czechoslovakia, Finland, New Zealand, Niger, the Philippines, Romania, the Sudan, Tunisia, the Union of Soviet Socialist Republics, the United Republic of Tanzania, the United States and Yugoslavia.

As stated in article 1 of the Mexican Federal Act concerning the Nation's Cultural Heritage of 1970, it is in the public interest to protect, conserve, retrieve and enhance the nation's cultural heritage. Bearing also on cultural right were the ratifications during 1970 by Mexico of cultural agreements concluded with France, Italy, the Republic of Korea and the Union of Soviet Socialist Republics; and by Brazil of the cultural agreement concluded with India.

Concern about health and human environment was reflected in legislation adopted during 1970 in the Byelorussian Soviet Socialist Republic: Act of the Byelorussian SSR of 4 June 1970 on Public Health and Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR of 22 October 1970 on increased criminal responsibility for water and air pollution; Japan: Laws Nos. 131, 132, 134, 135, 136, 137, 138, 139, 140 and 141 of 1970 relating *inter alia* to environmental pollution, air pollution, water pollution, marine pollution and soil pollution; New Zealand: Plants Act of 1970; Norway: Act of 6 May 1970 (No. 6), concerning protective measures against damage caused by oil pollution; and Poland: Ordinances of the Council of Ministers of 9 June 1970, concerning water pollution.

The present volume published summaries of judicial decisions rendered by various courts in Argentina, Australia, Canada, the Federal Republic of Germany, Jamaica, the Netherlands, New Zealand, the Philippines, Poland, Switzerland, Turkey, the United States and Yugoslavia. The cases decided concerned *inter alia* the right to a fair trial and hearing, the right to personal liberty, the right to a nationality, the right to freedom of movement and residence, the right to privacy, 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 and the right to own property.

Part II of the *Yearbook* contains information on Trust Territories under the administration of Australia (Trust Territory of New Guinea) and Non-Self-Governing Territories under the administration of Australia (Territory of Papua) and the United Kingdom of Great Britain and Northern Ireland (Seychelles, and Gilbert and Ellice Islands). The information on the Trust Territory of New Guinea consists of legislative developments in that territory relating to equal rights in marriage, just and favourable conditions of work and the right to education, and

judicial decisions bearing on the right to a fair trial and the prohibition against self-incrimination. The information on Seychelles and Gilbert and Ellice Islands comprises extracts from the constitution of these Non-Self-Governing Territories promulgated in 1970.

Part III publishes the texts of, or extracts from, the following international instruments: the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations, adopted by the General Assembly of the United Nations on 24 October 1970; the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970; the Programme of Concerted International Action for the Advancement of Women, adopted by the General Assembly on 15 December 1970; the Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, adopted by the International Labour Conference on 22 June 1970; the Convention concerning Annual Holidays with Pay (Revised), 1970, adopted by the International Labour Conference on 24 June 1970; the Recommendation concerning Special Youth Employment and Training Schemes for Development Purposes, adopted by the International Labour Conference on 23 June 1970; the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 November 1970; the European Convention on the Repatriation of Minors, adopted by the Council of Europe on 28 May 1970; and the Declaration on Mass Communication Media and Human Rights, adopted by the Council of Europe on 23 January 1970.

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

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

PART I

STATES

ALGERIA

ORDER NO. 70-29 OF 23 APRIL 1970 RELATING TO THE CONDITIONS GOVERNING THE GRANTING OF REVERSIONARY PENSIONS AND SURVIVORS' DISABILITY PENSIONS UNDER THE GENERAL OLD-AGE INSURANCE SCHEME[1]

Art. 1. The last paragraph of article 39 *(f)* of amended Decision No. 49-045 relating to the organization of a social security scheme in Algeria, which was put into effect by Order of 10 June 1949, shall be rescinded and replaced by the following provisions:

When a dependent spouse reaches the age of 55, the allowance provided for in the preceding paragraph shall be equal to half of the allowance granted to senior wage-earners.

Art. 2. Article 39 *(g)* of Decision No. 49-045, referred to in article 1, shall be rescinded and replaced by the following provisions:

The widows of wage-earners who were entitled to an old-age pension or of wage-earners who had been insured, at the time of their death, for the necessary length of time shall receive a reversionary pension provided that they:

Are not themselves receiving a pension under the social security scheme;

Have attained the age of 55 or more;

Were dependants on the deceased;

Had entered into a marriage with the deceased at least two years before his death.

However, a widow receiving an old-age pension by virtue of her own employment may choose the reversionary pension if the latter is more advantageous.

The reversionary pension shall equal half that of the wage-earner, to which may be added the family allowance provided for in the preceding article.

If the deceased leaves several widows, the reversionary pension shall be shared equally among them.

The pension shall cease if the widow remarries, as from the first day of the following quarter.

Art. 3. Article 39 *(h)* of Decision No. 49-045, referred to in article 1, shall be rescinded and replaced by the following provisions:

When a surviving spouse suffers total disablement, a pension calculated in accordance with the preceding article shall be paid, whatever the age of the survivor, to the extent that the deceased spouse satisfied the insurance conditions entitling him to a principal pension at the time of his death.

However, if the surviving spouse is a widower, as an additional requirement, his wife must have provided the main support of the family through her own work.

. . .

[1] *Journal officiel de la République algérienne démocratique et populaire*, No. 38, of 28 April 1970.

ORDER NO. 70-38 OF 12 JUNE 1970 ON THE REORGANIZATION OF THE ALGERIAN NATIONAL THEATRE[2]

Chapter I

General Provisions

Art. 1. The Algerian National Theatre, set up under the above-mentioned Decree No. 63-12 of 8 January 1963, shall be a public institution of an industrial and commercial nature, which shall have juridical personality and financial autonomy. It shall be placed under the supervision of the Ministry of Information.

Art. 2. The goal of the Algerian National Theatre shall be to contribute to cultural development through the production and dissemination of performances of dramatic and choreographic works of art of an educational and cultural nature.

To this end, it shall be responsible, *inter alia*, for:

Undertaking research to identify the characteristics of an authentically Algerian theatre;

[2] *Ibid.*, No. 53, of 19 June 1970.

Performing, according to annual plans, a minimum number of works by Algerian authors set by decision of the Minister of Information;

Enriching its repertoire through the performance of works by foreign authors which belong to the classical and modern world theatre;

Giving the national troupe, by means of advanced training, a broad choice of repertoire and, by means of the recruitment requirements, a high artistic level;

Providing for broad popular dissemination of the works of art performed through the organization of regular performances;

Receiving foreign dramatic and choreographic troupes, within the framework of the annual programme of international exchanges set up by the supervising authority;

Participating in any cultural events organized in Algeria or abroad by the supervising Ministry.

Art. 3. The Algerian National Theatre shall be responsible for the artistic, administrative and financial management of the theatre of Algiers and of any other institution which may be entrusted to it by decree of the Minister of Information.

...

ORDER NO. 70-39 OF 12 JUNE 1970 ESTABLISHING GENERAL REGULATIONS FOR REGIONAL THEATRES[3]

TITLE I

General Provisions

Chapter I

ESTABLISHMENT – NAME

Art. 1. Regional theatres shall be established and closed down by a decree issued at the suggestion of the Minister of Information.

Art. 2. The regional theatres shall be public institutions of an industrial and commercial nature, which shall have juridical personality and financial autonomy and shall be placed under the supervision of the Ministry of Information.

Chapter II

PURPOSE

Art. 3. The purpose of the regional theatres shall be to contribute to the enrichment and development of the nation's artistic heritage.

To this end, they shall be responsible, *inter alia*, for:

(1) Performing, according to annual plans, a minimum number of works by Algerian authors;

(2) Enriching their repertoire through the performance of works by foreign authors which belong to the classical and modern world theatre;

(3) Encouraging people to pursue careers in the theatre and fostering Algerian dramatic art within their (the theatres') respective regions;

(4) Providing for broad popular dissemination of the works of art performed through the organization of regular performances;

(5) Receiving national and regional artistic groups and arranging for performances by them;

(6) Receiving foreign dramatic troupes under the programme set up by the Ministry of Information;

(7) All regional theatres may also be invited by the supervising authority to participate in any cultural events or tours organized in Algeria or abroad.

[3] *Ibid.*

ORDER NO. 70-40 OF 12 JUNE 1970 ON THE ESTABLISHMENT OF A NATIONAL INSTITUTE OF DRAMATIC AND CHOREOGRAPHIC ART[4]

Chapter I

General Provisions

Art. 1. A public institution of an administrative nature shall be established under the name of "National Institute of Dramatic and Choreographic Art"; it shall have juridical personality and financial autonomy and shall be placed under the supervision of the Minister of Information. The headquarters of the National Institute of Dramatic and Choreographic Art shall be located at Bordj El Kiffan.

Art. 2. The goal of the National Institute of Dramatic and Choreographic Art shall be to train, *inter alia*:

(1) Actors, producers, scene and costume designers;

(2) Choreographers, dancers;

[4] *Ibid.*

Art. 3. The National Institute of Dramatic and Choreographic Art shall be empowered to confer diplomas attesting the instruction it provides.

Art. 4. Regulations will subsequently be adopted determining the Institute's rules of procedure, entrance requirements, the length of its courses, and its study requirements, and the issue of diplomas attesting compliance with these requirements.

...

ORDER NO. 70-86 OF 15 DECEMBER 1970 ESTABLISHING THE ALGERIAN NATIONAL CODE[5]

Chapter I

General Provisions

Art. 1. The requirements for the possession of Algerian nationality shall be determined by law and, in certain cases, by duly ratified and published international treaties or agreements.

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

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

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

Art. 3. The acquisition of Algerian nationality shall depend upon the declaration of repudiation of nationality of origin.

This declaration shall take effect as soon as Algerian nationality has been acquired.

Art. 4. For the purpose of this Order, a person of either sex shall attain his or her majority on reaching the age of 21 years.

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

Art. 5. The expression "in Algeria" shall be understood to refer to the entire territory of Algeria, Algerian territorial waters and Algerian ships and aircraft.

Chapter II

Nationality of origin

Art. 6. The following shall be of Algerian nationality by filiation:

(1) A child born of an Algerian father;

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

(3) A child born of an Algerian mother and a stateless father.

Art. 7. The following shall be of Algerian nationality by birth in Algeria:

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

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

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

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

Art. 8. A child who is an Algerian national by virtue of articles 6 and 7 above, shall be deemed to have been an Algerian national from birth, even if the statutory requirements for the attribution of Algerian nationality are established only subsequent to his birth. The attribution of Algerian nationality at birth and the deprivation or repudiation of such nationality in accordance with the provisions of article 6, paragraph 3, and article 7, paragraphs 1 and 2, above, shall not affect the validity of instruments executed by the person concerned or the rights acquired by third parties based on the apparent nationality previously possessed by the child.

Chapter III

Acquisition of Algerian nationality

ACQUISITION BY APPLICATION OF THE LAW

Art. 9. Acquisition of Algerian nationality by birth and residence in Algeria:

Unless the Minister for Justice objects in accordance with article 26 hereunder, the following

[5] *Ibid.*, No. 105, of 18 December 1970.

persons shall acquire Algerian nationality if, within the 12 months preceding attainment of their majority, they declare their desire to acquire such nationality and, if at the time of making such declaration they are habitually and regularly resident in Algeria:

A child born in Algeria of an Algerian mother and an alien father born outside Algerian territory.

Silence on the part of the Minister for Justice after 12 months reckoned from the date of completion of the submission of the application shall imply consent.

NATURALIZATION

Art. 10. An alien who so requests may acquire Algerian nationality, provided that:

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

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

(3) He has attained his majority;

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

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

(6) He is sound in body and mind;

(7) He can justify his assimilation to the Algerian community.

The request shall be addressed to the Minister for Justice, who may, however, reject it under the terms of article 26 of this Code.

EXCEPTIONS

Art. 11. The Government may choose to disregard a criminal conviction handed down in a foreign country.

The seven years specified in article 10, paragraph 1, above shall be reduced to 18 months for a child born in a foreign country of an Algerian mother and an alien father.

Notwithstanding the provisions of article 10, paragraph 6, above, an alien whose infirmity or illness was contracted in the service of or in furthering the interests of Algeria may be naturalized.

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

RECOVERY

Art. 14. Algerian nationality may be restored by decree to any person who, having had that nationality as his nationality of origin and having lost it, requests such restoration after at least 18 months' habitual and regular residence in Algeria.

EFFECTS OF ACQUISITION

Art. 15. Individual effect: a person acquiring Algerian nationality shall, from the date of acquisition, enjoy all the rights inherent in the status of an Algerian national.

Art. 16. However, during the period of five years following his naturalization, an alien who becomes a naturalized Algerian may not be appointed to elective functions. He may, however, be relieved of this disability by the decree of naturalization.

Art. 17. Collective effect: the minor children of persons acquiring Algerian nationality under article 10 of this Code shall acquire Algerian nationality at the same time as their parent.

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

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

Chapter IV

Loss and deprivation

LOSS

Art. 18. The following shall lose Algerian nationality:

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

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

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

(4) An Algerian national who declares that he renounces Algerian nationality in the circumstances described in the third paragraph of article 17 above.

Art. 19. An Algerian national may lose his Algerian nationality if he holds a post in a foreign country or in an international organization of which Algeria is not a member or, more generally, renders it assistance, and has not resigned his post

or ceased to render such assistance, despite the direction to do so which the Algerian Government shall serve on him. Such direction shall set a period which may not be less than two weeks or more than two months.

...

Art. 21. Loss of Algerian nationality shall extend its effect, without further formality, to the unmarried minor children of the person incurring the loss who actually reside with him, in the cases referred to in article 18, paragraphs 1, 2 and 4, above.

DEPRIVATION

Art. 22. Any person who has acquired Algerian nationality may be deprived of it if:

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

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

(3) He has wilfully evaded national service;

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

Deprivation shall not be incurred unless the acts with which the person concerned is charged occurred within the 10 years following the date on which he acquired Algerian nationality.

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

Art. 23. Deprivation shall be ordered by decree after the party concerned has been given an opportunity to submit his observations.

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

Art. 24. Deprivation of nationality may be extended to the wife and minor children of the person concerned.

It may not, however, be extended to his minor children unless it is also extended to their mother.

Chapter VI

Proof and disputes

PROOF

Art. 31. In questions involving nationality the burden of proof shall be upon the person who, by instituting legal proceedings or by raising an objection, claims that he himself or another person possesses or does not possess Algerian nationality.

Art. 32. When Algerian nationality is claimed as the nationality of origin, it may be proved by filiation with respect to two paternal ancestors born in Algeria and having possessed Muslim status there.

It may also be proved by any other means, and *inter alia* by the possession of the status of an Algerian national.

The possession of such status shall depend on a number of well-known public and incontrovertible facts establishing that the person concerned and his parents have conducted themselves as Algerians and have been considered as such, by both the public authorities and individuals.

The foregoing provisions shall not affect the rights flowing from the acquisition of Algerian nationality by application of the law.

...

DISPUTES

Art. 37. Only the courts shall be competent to deal with disputes involving Algerian nationality.

When such a dispute is brought about by the raising of an objection before another jurisdictional body, the latter shall stay judgement until the dispute has been settled by the territorially competent court, to which the decision for the stay of judgement shall be submitted within one month by the party bringing the nationality dispute; otherwise, the objection shall be overruled.

Judgements by the courts in disputes involving Algerian nationality shall be subject to appeal.

When in the course of a dispute there is need for an interpretation of the provisions of international conventions relating to nationality, that interpretation shall be requested by the *ministère public* from the Ministry of Foreign Affairs.

Such interpretation shall be binding on the courts.

...

Chapter VII

Special provisions

Art. 41. Act No. 63-96 of 27 March 1963 establishing the Algerian nationality code is repealed.[6]

[6] For extracts of Act No. 63-96, see *Yearbook on Human Rights for 1963*, pp. 12 to 15.

INTERNATIONAL CONVENTIONS

1. The Convention relating to legal co-operation between the Democratic and Popular Republic of Algeria and the Islamic Republic of Mauritania, signed at Nouakchott on 3 December 1969, was ratified by Order No. 70-4 of 15 January 1970.[7] Under article 66 of the Convention, it will enter into force as from the date of exchange of the instruments of ratification.

2. The Convention between the Democratic and Popular Republic of Algeria and the Kingdom of Belgium relating to the employment and residence in Belgium of Algerian workers and their families, signed at Algiers on 8 January 1970, was published in the *Official Journal* in accordance with Decree No. 70-34 of 19 February 1970.[8] Under article 21 of the Convention, it entered into force on the date of signature.

3. The Convention between the Democratic and Popular Republic of Algeria and the Kingdom of Belgium relating to legal assistance in civil and commercial matters, signed at Brussels on 12 June 1970, was ratified by Order No. 70-60 of 8 October 1970.[9] Under article 22 of the Convention, it will enter into force 30 days after the exchange of the instruments of ratification.

4. The Convention between the Democratic and Popular Republic of Algeria and the Kingdom of Belgium relating to extradition and reciprocal legal assistance in criminal matters, signed at Brussels on 12 June 1970 was ratified by Order No. 70-61 of 8 October 1970.[10] Under article 36 of the Convention, it will enter into force 30 days after the exchange of the instruments of ratification.

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[7] *Journal officiel de la République algérienne démocratique et populaire*, No. 14, of 11 February 1970.

[8] *Ibid.*, No. 25, of 13 March 1970.

[9] *Ibid.*, No. 92, of 3 November 1970.

[10] *Ibid.*

ARGENTINA

NOTE[1]

The rights proclaimed in the United Nations Universal Declaration of Human Rights of 1948 (whether civil, political, economic, educational or social) are part of the National Constitution, where they are embodied in articles 14 and 20. They apply to all human beings who live in Argentine territory, without distinction of race, colour or creed. The Constitution was established one century before the Declaration; its text is fully explanatory and adequately establishes that any activity, law or administrative provision that does not abide by those rights constitutes a flagrant violation of its principles.

The Argentine Republic is a "Federal State" and therefore the provinces (autonomous states) adopt their own constitutions; however, such constitutions must be "in accordance with the principles, declarations, and guarantees of the National Constitution" (Article 5, National Constitution), so that those rights and guarantees are found in each of them.

Because of the republican form of government of Argentina, the judiciary is responsible for safeguarding the National Constitution, and the nation's Supreme Court of Justice ultimately interprets the Constitution; for that reason, and to comply with the request from the World Organization, relevant extracts of various decisions are quoted below.

Right to publish ideas:

"Exercise by civil servants of free criticism of Government actions is an essential manifestation of freedom of the press" (*Fallos* (Decisions), T.269, p. 189).

"The essence of freedom of the press consists in the right to publish ideas through the press without previous censorship, but not in the subsequent impunity of anyone using the press as a means to commit offences (*Fallos*, T.269, p. 189).

"No civil servant, not even a judge, shall enjoy the privilege of exemption from criticism through the press; but such criticism must be made within legitimate boundaries, without offending the dignity and honour of the official" (*Fallos*, T.269, p. 195).

Right to defence by trial:

"The constitutionally guaranteed defence by trial implies the possibility of appeal to the ordinary courts to safeguard the rights of individuals" (*Fallos*, T.257, p. 263).

"The decision, based on decree 5426/62, stating that no judicial appeal of article 70 of the Customs Law is possible when sentence has been pronounced without a further hearing than the act of sequestration is a violation of the guarantee of defence by trial and should be revoked" (*Fallos*, T.258, p. 34).

"The constitutional guarantee of defence by trial ensures that all litigants have an equal right to a sentence based on a previous trial by law, whether civil or criminal proceedings are involved" (*Fallos*, T.218, p. 266).

Right to fair remuneration:

"The right to fair remuneration, guaranteed by the Constitution under the law, is transgressed when settlement of the honorarium of an expert must be restricted, under a law passed later than acceptance and execution of the work, to the cost of the trial and to the remuneration of other professionals, even in cases where that amount bears no relation to the importance, complexity and level of the work. Act 6054 of the Province of Santa Fe is unconstitutional if applied with that scope" (*Fallos*, T.268, p. 561).

Right to enter, remain in, travel through and leave the country:

"A recourse of *amparo* must be granted in favour of a person who entered the country and remained in it for more than 13 years, who studied at university before graduating, practised his profession honourably and proved that he had founded a family with an Argentine wife and children. In such conditions, the party concerned is an inhabitant of the country, who is covered by the guaranteed right to remain in it, under the National Constitution" (*Fallos*, T.268, p. 393).

"Under the constitutionally guaranteed right to remain in the national territory and to work, *amparo* must be granted when an appeal is

[1] Note furnished by the Government of Argentina.

lodged against the *Dirección Nacional de Migraciones*, which gave notice to leave the national territory to a person who had entered as a tourist in 1956, who married an Argentine woman and had proof of having worked and resided in the country since then, if there was insufficient evidence to include the appellant in the terms of Decree 22.737/57, article 10, regulating act 817" (*Fallos*, T.268, p. 406).

Right to property:

"The decision granting compensation greater than that requested by the party concerned violates the guarantee of inviolability of property and of defence by trial; that principle has force of law in matters of expropriation" (*Fallos*, T.256, p. 154; T.424 and 268, p. 7).

"Destruction of a sequestered book, ordered by a Municipality, without the judicial body having passed sentence on the immorality of the work, even when the work deserves communal disapproval, constitutes a violation of article 17 of the National Constitution" (*Fallos*, T.257, p. 275).

All the above clearly shows that the Argentine judicial apparatus maintains respect for, and recognition of, Human Rights, the enforcement of which has been and remains constant throughout the jurisprudence of national and provincial Argentine courts.

ACT NO. 18,653[2]

Art. 1. Replace articles 19, 20 21 and 22 of Legislative Decree No. 4,805/63 (ratified by Act No. 16,478) by the following:

"*Art. 19.* 'Permanently resident' aliens who are obliged to remain outside the territory of the Republic for health, study, family, occupational or business reasons for uninterrupted periods of more than 24 months shall be exempted from the provisions of the preceding article and shall be required, before the expiry of such period, to produce proof of the aforementioned exceptional circumstances to an Argentine consular official and to present a valid passport and an Argentine document evidencing their resident status. The said consular official shall issue a certificate indicating the additional period of stay abroad which is authorized. The latter period may not be more than 12 months except in the case of studies, for which it may be up to 36 months.

"*Art. 20.* Aliens who have, by virtue of the preceding article, obtained authorization to extend their stay abroad may return within the authorized time with a valid passport, an Argentine document evidencing their permanent resident status and the consular certificate provided for in article 19.

"*Art. 21.* 'Permanently resident' aliens who remain outside the territory of the Republic for periods of not more than 24 months may return with a valid passport not bearing an Argentine consular visa and an Argentine document evidencing their permanent resident status.

"*Art. 22.* Permanently resident aliens who remain outside the territory of the Republic for periods of not more than 24 months may return from neighbouring countries with an Argentine document evidencing their permanent resident status. The Department of Immigration shall have the power to impose other requirements."

[2] *Boletín Oficial*, No. 21,911, of 17 April 1970.

ORDER NO. 14,904[3]

Art. 1. Inspectors of the Department, and those authorities to which the control of departures from the country at the places appointed for the purpose is delegated, are instructed, when examining the papers of aliens who are "permanently resident" in the Republic, to require the presentation of a travel certificate issued by the Federal Police (Decree No. 2,015/66, Arts. 49 and 50) or of "police records" or "good conduct certificates" issued by the Provincial Police and endorsed by the Federal Police (Decree No. 2,015/66, Art. 54).

Art. 2. Aliens permanently resident in the Republic who are travelling to neighbouring American countries shall be exempted from the foregoing provisions.

Art. 3. Where a permanently resident alien does not present the document mentioned in article 1 of this Order, the emigration authority involved shall inform the Federal Police or the security authority at the scene and shall notify the person concerned of the need to comply in advance with that requirement.

Art. 4. This Order shall enter into force twenty (20) days after its publication in the *Boletín Oficial*.

[3] *Ibid.*, No. 21,932, of 19 May 1970.

AUSTRALIA

NOTE*

I. Legislation

A. EQUALITY BEFORE THE LAW

(Universal Declaration of Human Rights, articles 7, 10)

The *Legal Practitioners (Legal Aid) Act*, 1970 (No. 37 of 1970) of New South Wales provides for the establishment of a scheme of legal aid for persons who do not qualify for assistance under the *Legal Assistance Act* 1943, that is, who do not qualify for the assistance of the Public Solicitor. The scheme will be conducted by the Law Society of New South Wales and will be financed by part of the interest earned on solicitors' trust accounts. Applicants will need to pass a means test and, if they are granted assistance, to make a contribution towards costs.

B. PROTECTION OF THE FAMILY

(Universal Declaration, article 16)

The *Compensation (Fatal Injuries) Ordinance*, 1970 (No. 75 of 1970) of the Northern Territory of Australia extends the period within which an action may be brought from one year from the date of death to six years from that date.

The *Family Provision Ordinance*, 1970 (No. 10 of 1970) of the Northern Territory of Australia repeals the *Testator's Family Maintenance Ordinance* 1929-1931 and replaces it with a more up to date Ordinance designed to ensure that the family of a deceased person receives adequate provision out of the estate. Members of the family of a deceased person who consider that they have received inadequate provision out of the estate may apply to the Supreme Court of the Territory for an order that they receive adequate provision.

C. JUST AND FAVOURABLE CONDITIONS OF WORK

(Universal Declaration, articles 23, 25)

The *Workers' Compensation (Amendment) Act*, 1970 (No. 67 of 1970) of New South Wales increases rates of workers' compensation and otherwise amends the law relating to workers' compensation, the principal amendment having the effect of increasing workers' compensation payments not simply by the percentage increase in the Consumer Price Index, as was done in the past, but by an amount related to the movement in average weekly earnings in the State.

The *Workers' Compensation Amendment Act*, 1970 (No. 18 of 1970) of Western Australia amends the definition of "worker" so that piece workers and persons paid by results will be included. Recommendations of a committee appointed to make a comprehensive survey of the principal Act having been approved, this amending Act also makes a large number of other improvements to the law.

The *Workers' Compensation Amendment Act (No. 2)*, 1970 (No. 43 of 1970) of Western Australia puts "de facto" wives in the same position as legal wives and also effects some increases in rates of compensation.

The *Workmen's Compensation Ordinance (No. 2)*, 1969 (No. 1 of 1970) of the Northern Territory of Australia establishes a Workmen's Compensation Tribunal to hear and determine compensation claims in the Territory. Entitlement to payment in respect of medical and associated charges is increased and the upper limit on the amount of such payments is removed. A Chief Inspector is made responsible for the administration of the Ordinance and provision is made also for the Administrator to appoint inspectors for the purposes of the Ordinance. The administrator also is given power to make reciprocal arrangements with the United Kingdom and British possessions for the transfer and management of sums awarded as workmen's compensation.

D. RIGHT TO ADEQUATE STANDARD OF LIVING

(Universal Declaration, article 25)

The *Delivered Meals Subsidy Act*, 1970 (No. 5 of 1970) of the Commonwealth provides for assistance, by the Commonwealth by way of money payments, towards the establishment,

* Note furnished by Mr. J. O. Clark, government-appointed correspondent, Canberra.

expansion, improvement and maintenance of delivered meal services for aged and invalid persons.

The *Handicapped Children (Assistance) Act*, 1970 (No. 27 of 1970) of the Commonwealth provides for the grant of financial assistance by the Commonwealth towards the provision of training and accommodation for handicapped children.

The *Sheltered Employment (Assistance) Act*, 1970 (No. 84 of 1970) of the Commonwealth expands a scheme of assistance begun in 1967. The Act makes provision for the payment of a subsidy towards the capital cost of accommodation for disabled persons working in normal industry. It provides also for a training fee of $500 to be paid to a sheltered workshop organization for each person placed in normal employment who remains in that employment for twelve months. Lastly, it provides for the payment of a $1 for $1 subsidy towards the salaries of certain sheltered workshop staff.

The *States Grants (Aboriginal Advancement) Act*, 1970 (No. 116 of 1970) of the Commonwealth grants financial assistance to the States for the welfare and advancement, including housing, of the aboriginal people.

The *Repatriation Act (No. 2)*, 1970 (No. 60 of 1970) of the Commonwealth provides for increases in the rates of certain repatriation pensions and allowances.

The *Seamen's War Pensions and Allowances Act*, 1970 (No. 61 of 1970) of the Commonwealth provides for increases in certain war pensions and allowances paid to seamen.

The *Social Service Act*, 1970 (No. 2 of 1970) of the Commonwealth makes special provision for married pensioners who suffer illness or infirmity. The principal effect is to enable the "single rate" pensions to be paid to married couples where they are forced by illness or infirmity to live separately. The income and property limits in the means test are raised accordingly.

The *Social Services Act (No. 2)*, 1970 (No. 59 of 1970) of the Commonwealth increases the base rates for age, invalid and widow pensioners. It also increases the long term sickness benefit.

E. RIGHT TO EDUCATION

(Universal Declaration, article 26)

The *States Grants (Teachers Colleges) Act*, 1970 (No. 26 of 1970) of the Commonwealth extends the programme of financial assistance to the States for the purposes of building projects for Teachers Colleges, the grants totalling thirty million dollars, spread over three financial years.

The *Educational Research Act*, 1970 (No. 112 of 1970) of the Commonwealth enables the amount of Commonwealth financial assistance given to educational research in Australia to be increased in the year 1970-71.

The *James Cook University of North Queensland Act*, 1970 (No. 19 of 1970) of Queensland provides for the establishment and incorporation of a University at Townsville, to be known as the James Cook University of North Queensland.

II. Court Decisions

A. FAIR HEARING

(Universal Declaration, article 10)

Duty to hear argument from counsel

At the conclusion of the evidence given on the hearing in a Court of summary jurisdiction of a complaint for a non-indictable offence, the Justices constituting the Court adjourned for a short interval. On returning to the Bench, they proceeded to give judgement upon the complaint, without hearing argument from counsel.

Held, by the Supreme Court of South Australia, that it was the duty of the Justices to hear not merely the evidence, but also any argument which either party wished to submit; and the depriving of one or both parties of their right to present argument on the evidence was a violation of natural justice which entitled the aggrieved party to have the adjudication set aside.

Ewens v. *Burke (1970) S.A.S.R. 557*

B. RIGHT TO GUARANTEES NECESSARY FOR DEFENCE AGAINST A CHARGE

(Universal Declaration, article 11)

Police interrogation

On 11 January 1969, police were called to investigate the death of B. Later the same day J. was arrested on a charge of having goods in his custody reasonably suspected of having been stolen and was remanded in custody until 14 January 1969. About 7.30 p.m. on the night of 13 January 1969, a police interrogation of J. commenced in connexion with the death of B. and continued for fourteen hours with certain breaks. J. was next allowed to sleep for four hours and was then taken to court on the goods in custody charge and was again remanded. The interrogation recommenced about 2.30 p.m. on Tuesday, 14 January 1969, and continued for another ten hours with certain breaks. Twenty-eight and three-quarter hours elapsed between the beginning of the interrogation, of which seventeen and a half hours were devoted to actual questioning and the balance to breaks for one purpose or another. At the trial of J. for the murder of B. the defence objected to the admissibility in evidence of the signed record of interview arising from the interrogation.

Held, by the Central Criminal Court of New South Wales:

(1) That the interrogation had been carried out to an improper length and in an improprer fashion.

(2) That the record of interview should be rejected as being unfair to the accused and as

having been obtained in such circumstances that to admit it might lead to a miscarriage of justice.

(3) That the objection would be upheld.

R. v. *Jones (1970) 91 W.N. (N.S.W.) 777.*

C. RIGHT TO PRIVACY

(Universal Declaration, article 12)

Section 353A (3) of the *Crimes Act*, 1900 (N.S.W.) (applicable in the Australian Capital Territory) provides, "When a person is in lawful custody for any offence punishable on indictment or summary conviction, the officer in charge of police at the station where he is so in custody may take or cause to be taken all such particulars as may be deemed necessary for the identification of such person, including his photograph and finger-prints".

Held, by the Supreme Court of the Australian Capital Territory, on appeal, that the power to take, or cause to be taken, finger-prints is a discretionary power which must be exercised by the officer in charge of police at a particular police station in relation to individual cases. The officer in charge must exercise his own judgement. It is wrong both for the Commissioner of Police to lay down a common rule for all cases and for the officer in charge of police at a particular police station to act upon such a common rule. Finger-prints may only be taken for the "identification" of the person in custody (including establishing who the person is) and then may only be taken when "necessary" for that purpose. It is not sufficient that finger-printing is thought desirable.

Sernack v. *McTavish (1970) 15 F.L.R. 381.*

AUSTRIA

NOTE*

It is characteristic of the legal system of Austria that human rights and fundamental freedoms have for over a century occupied a prominent position in the Constitution whence they have continually influenced a wide variety of legal institutions and the jurisprudence of the supreme courts. Lately human rights have received special attention above all in the following areas:

A. Efforts towards a recodification of fundamental rights and freedoms being made by a group of experts appointed by the Federal Government:

The work for the recodification of fundamental rights and freedoms which has been going on since 1964 was continued in the year under review. At the eight meetings held in that year, the following topics were discussed in detail:

(a) Positive and negative freedom of association and assembly;

(b) The right to strike; the right to refuse to take part in a strike; positive and negative freedom of association in vocational contexts and in business and industry; freedom of occupational activity; freedom to choose one's occupation; general and equal access to public services and utilities and protection against the misuse of monopolies;

(c) The right to have impartial public authorities; the right to a hearing before the proper authorities within a reasonable time; the right to receive decisions from public authorities within a reasonable time; the right to be brought before a legally appointed judge; safeguards to ensure an independent Bar; the publicity and orality of judicial proceedings; the prohibition of torture; the accusatorial principle; the right to use one's native tongue in criminal proceedings;

(d) The right to lodge effective complaints against a violation of a fundamental right, and the right to have such complaints determined by a court of law.

B. In the legislative field, the following measures taken in 1969 deserve special mention:

(a) *Federal Act of 30 October 1970, on the reform of the legal status of illegitimate children (Federal Law Gazette, No. 342/1970)*

This law provides for fundamental alterations to the status of illegitimate children. Their status is very largely equated to that of legitimate children. Thus, an illegitimate child is entitled to the same maintenance as a legitimate one. The act for the first time gives the illegitimate child a legal right of inheritance to his natural father's estate, if the deceased's paternity has been duly established.

(b) *Federal Act of 27 November 1970, concerning elections to the National Council (National Council Election Rules, 1971; Federal Law Gazette, No. 391/1970)*

Following the Federal Act of 25 November 1969, Federal Law Gazette, No. 437/1969, by which a number of steps were taken to take better account of the wishes of the voters (e.g., by introducing absentee voting cards), this law regulates elections to the National Council on a comprehensive scale. Besides increasing the number of seats in the National Council, the law above all revises the organizational arrangements for the elections.

C. In the period under review, Austria ratified the following international agreements in the field of human rights and fundamental freedoms:

(a) *Convention concerning Maternity Protection (Federal Law Gazette, No. 31/1970)*

Convention (No. 103) concerning Maternity Protection, adopted in Geneva on 28 June 1952 by the General Conference of the International Labour Organisation, was ratified on 18 September 1969. The instrument of ratification was registered by the Director-General of the International Labour Office on 4 December 1969. In accordance with its article 9 (3), the Convention therefore entered into force for Austria on 4 December 1970.

(b) *Convention concerning Minimum Standards of Social Security (Federal Law Gazette, No. 33/1970)*

Convention (No. 102) concerning Minimum Standards of Social Security, adopted in Geneva

* Note furnished by the Government of Austria.

on 28 June 1952 by the General Conference of the International Labour Organisation, was ratified on 10 September 1969. The ratification of the Convention by Austria was registered with the Director-General of the International Labour Organisation on 4 November 1969, so that the Convention in accordance with its article 79 (3) entered into force for Austria on 4 November 1970.

(c) *Decree of the Federal Chancellor of 25 September 1970, concerning the extension of the operation of the Declarations made by the Austrian Federal Government in accordance with Articles 25 and 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (Federal Law Gazette, No. 311/1970)*

The permanent Austrian Mission to the Council of Europe on 31 August 1970, deposited with the Secretary-General of the Council a declaration to the effect that the declarations made regarding Articles 25 and 46 were being extended for a period of three years starting 3 September 1970.

(d) *Decree of the Federal Chancellor of 25 September 1970, concerning the extension of the operation of the Declaration made by the Austrian Federal Government in accordance with Article 6 (2) of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, granting certain Rights and Freedoms not contained in the Convention or the First Protocol (Federal Law Gazette, No. 312/1970)*

The Permanent Austrian Mission to the Council of Europe on 31 August 1970, deposited with the Secretary-General of the Council a declaration to the effect that the declaration made previously was being extended for a period of three years starting 3 September 1970.

(e) *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 (Federal Law Gazette, No. 329/1970)*

The Austrian instrument of ratification of this Protocol was deposited with the Secretary-General of the Council of Europe on 29 May 1967. The Protocol therefore entered into force in accordance with its article 5 (2) on 21 September 1970.

(f) *Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention (Federal Law Gazette, No. 330/1970)*

The Austrian instrument of ratification of this Protocol was deposited with the Secretary-General of the Council of Europe on 29 May 1967. The Protocol therefore entered into force in accordance with its article 4 (2) on 21 September 1970.

BOLIVIA

FREEDOM OF OPINION AND EXPRESSION

SUPREME DECREE OF THE PRESIDENT OF THE REPUBLIC No. 09113 OF 20 FEBRUARY 1970[1]

Art. 1. As from 1 March 1970, Bolivian newspaper workers shall enjoy the benefit of a mandatory day of rest from their employment on Sundays.

Art. 2. In keeping with the provisions of the preceding article, no newspaper company publishing morning newspapers may issue them on Mondays.

Art. 3. Having regard, however, to requests from newspaper workers' trade union organizations, the Ministry of Culture, Information and Tourism may authorize Bolivian newspaper workers' trade unions which apply for permission to do so to publish weekly organs which shall be issued on Mondays and shall serve also as a medium of free expression for all sectors of Bolivian labour, under the responsibility and direction of the newspaper workers' trade union organizations.

The publishers of such weekly organs shall, as a matter of priority, apply part of their earnings to compensating those journalists and typographers who do not participate in the Sunday work authorized in this article for the non-receipt of Sunday overtime pay.

Art. 4. Newspaper companies shall be required to set aside each day in their opinion columns the space equivalent to an editorial, in order that their editors or reporters who are members of newspaper workers' trade unions may express their ideas freely in the form of signed commentaries.

Art. 5. Broadcasting companies shall also allow their editors who are members of broadcasting workers' trade unions up to three minutes during one of their daily news bulletins for the purposes indicated in article 4.

Art. 6. Any kind of censorship or rejection of signed commentaries in exercise of the rights recognized in articles 4 and 5 of this Decree shall be prohibited, except in the cases referred to in articles 11 and 13 of the Act of 19 January 1925.

Art. 7. Should any newspaper or broadcasting company, despite the provisions of the preceding article, refuse to publish or broadcast this type of commentary, the trade union concerned shall lodge a complaint with the Minister of Culture, Information and Tourism, who shall arrange for an investigation of the case and, if the complaint is substantiated, shall order the news medium concerned to publish or broadcast the commentary which has been refused.

Art. 8. Newspaper or broadcasting companies shall be prohibited from penalizing and/or dismissing their editors or reporters for writing articles which are at variance with or contrary to the views of the company.

Art. 9. No newspaper or broadcasting company shall refuse to publish or broadcast notices or statements by newspaper and broadcasting workers' trade unions or federations. Failure to comply with this obligation shall be deemed to constitute censorship falling under the provisions of article 7 of this Decree.

[1] *Gaceta Oficial de Bolivia,* No. 492, of 20 February 1970.

ESTABLISHMENT OF THE NATIONAL ADULT LITERACY AND EDUCATION PROGRAMME

SUPREME DECREE OF THE PRESIDENT OF THE REPUBLIC No. 09177 OF 14 APRIL 1970[2]

Art. 1. The National Adult Literacy and Education Programme is hereby established and shall be carried out through the effective mobilization of the entire citizenry under State leadership.

Art. 2. The Ministry of Education, through its National Office of Adult Literacy and Education, shall be responsible for carrying out the National Adult Literacy and Education Programme in accordance with the procedures approved in this Supreme Decree. The National Literacy Office of the Ministry of Rural Affairs, with all its staff and working equipment, shall be absorbed into the Office of Adult Literacy and Education of the Ministry of Education.

Art. 3. The National Adult Literacy and Education Programme shall cover all illiterate persons between 15 and 50 years of age, who shall be required to register with and attend the centres to be established within the time-limits prescribed in the relevant rules and regulations. The Ministry of Education shall determine the criteria and tests which shall be applied in order to define the term "illiterate person" for the purposes of compliance with the aforementioned requirement and evaluation of the Programme.

Art. 4. Persons between 15 and 50 years of age who have not received a complete primary education or who become literate as a result of complying with the requirement established in article 3 shall be encouraged to pursue studies under the adult education system, in accordance with the provisions of chapter II of this Decree.

Chapter I

PURPOSES, OBJECTIVES AND TARGETS OF THE NATIONAL ADULT LITERACY AND EDUCATION PROGRAMME

Art. 5. The purposes of the National Adult Literacy Programme shall be:

(a) To contribute to the creation of a new society based on social justice and respect for human dignity;

(b) To develop in adults the necessary critical and reflective capacity to understand themselves and the world around them;

(c) To contribute to the integration of national life, while maintaining respect for cultural plurality;

(d) To develop in citizens an awareness of their duties towards their family, their community and their country and towards mankind, and to enable them to understand, defend and exercise their rights;

(e) To prepare the masses for participation in the structural changes required by the new society;

(f) To enable adults to solve their personal problems relating to life, work and human relations and contribute effectively to the solution of the fundamental problems of the country in the context of projects under the national development strategy;

(g) To promote rational understanding of world events and natural phenomena with a view to eliminating prejudices, outmoded beliefs and superstitions;

(h) To instill in all sectors of society the desire to raise their cultural level and take advantage of all modes of formal and informal education;

(i) To consolidate and foster the spiritual heritage of the Bolivian people as a help in overcoming decades of colonialist subjugation and alienation, in order that Bolivia may have its own distinctive culture rooted in native tradition, while not depreciating the common heritage of western civilization and the contributions of other cultures.

Art. 6. The objectives of the National Adult Literacy and Education Programme shall be:

(a) To train the illiterate and poorly educated in the critical and intelligent use of the spoken and written word and elementary mathematics, and to impart to them an understanding of their physical and social environment and an appreciation of indigenous cultures;

(b) To universalize the Spanish language in Bolivia as a vehicle for national integration, without prejudice to the continued existence and promotion of indigenous languages as instruments of social intercourse, in order to bring the rural masses into the mainstream of national life;

(c) To develop the habit of reading as a basic instrument in the individual's continuing process of education;

(d) To provide the necessary knowledge and encourage creative activities so that individuals and communities may attain higher levels of living, utilize and co-operate with the public services and participate in an organized manner in solving problems relating to health, production, housing, civic affairs and recreation;

(e) To lay the necessary educational foundation to enable the working population to benefit from the services which promote the application of technology to the processes of production and from manpower training;

[2] *Ibid.*, No. 502, of 24 April 1970.

(f) To enhance, through adult education, the role played in society by regular education at all levels, and to help to provide all children of school age with a complete primary education.

Art. 7. The targets of the National Adult Literacy and Education Programme for the period 1970-1975 shall be as follows:

(a) With regard to literacy: to eradicate illiteracy in adults between 15 and 50 years of age, and ensure that all children fulfil the obligation to receive a primary education;

(b) At the basic level: to provide supplementary primary education for at least 10 per cent of the persons between 15 and 50 years of age who become literate;

(c) At the secondary level: to ensure that by 1975 at least 5 per cent of the persons in that said age group are attending secondary education centres under the adult education system;

(d) With regard to adult education outside school: to carry out by all available means a cultural dissemination programme covering the entire population between 15 and 50 years of age.

...

Chapter III

DEFINITION AND STRUCTURE OF THE ADULT EDUCATION SYSTEM

Art. 14. For the purposes of the implementation of this Supreme Decree and of the programme for the period 1970-1975, adult education shall be understood to mean the process whereby the individual acquires a better understanding of himself and local, national and world problems and of the need to incorporate marginal groups into society, the critical ability effectively to use the basic tools of education, including reading, writing and mathematics, and the opportunity to benefit from higher levels of education.

...

Chapter VIII

PENALTIES AND COMPENSATORY PAYMENTS FOR NON-COMPLIANCE

Art. 76. As from 1 July 1971, any person of either sex between 15 and 50 years of age who is unable to read or write and who cannot produce, along with his personal identity card, a current certificate of actual attendance at a literacy centre, shall not be accepted for employment in a government department or industrial or commercial enterprise, a professional office, a shop of any kind, a household or a public or private institution.

Art. 77. Any employer who, as from 1 July 1971, engages the part-time or full-time services of an illiterate person who does not produce valid proof of his actual attendance at a literacy centre shall be fined a sum equivalent to the said person's monthly wages for the first offence and twice that amount for the second offence, and shall be taken into custody for the third offence.

...

FREEDOM OF OPINION AND EXPRESSION

SUPREME DECREE OF THE PRESIDENT OF THE REPUBLIC No. 09332 OF 13 AUGUST 1970[3]

Art. 1. Article 1 of Supreme Decree No. 09113, of 20 February 1970, is hereby amended as follows:

Bolivian newspaper workers shall enjoy the benefit of a mandatory day of rest from their employment on Sundays, except where, of their own volition, they wish to work at the rates of overtime pay established by law for that purpose.

Art. 2. Article 2 of the aforementioned Decree is hereby amended as follows:

Organs expressing the views of newspaper workers may be issued freely on Mondays, as may any morning newspaper which agrees with its workers to pay overtime for Sunday work.

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[3] *Ibid.*, No. 519, of 14 August 1970.

BOTSWANA

THE CITIZENSHIP OF BOTSWANA (SUPPLEMENTARY PROVISIONS) (AMENDMENT) ACT, 1969

ACT No. 56 OF 1969, ASSENTED TO ON 30 DECEMBER 1969 AND ENTERED INTO FORCE ON 6 JANUARY 1970[1]

Insertion of section 5B in Law No. 39 of 1966

2. The Citizenship of Botswana (Supplementary Provisions) Law, 1966 (hereinafter referred to as the principal law) is amended by the insertion immediately after section 5A thereof of a new section as follows:

"*Circumstances in which persons are not entitled to registration*

"5B (1) For the purposes of section 25 (3) of the Constitution[2] a person shall not be entitled to registration as a citizen of Botswana under the provisions of section 25 (1) of the Constitution who

"*(a)* Is a prohibited immigrant as defined in section 8 of the Immigration (Consolidation) Law, 1966; or

"*(b)* In the opinion of the Minister is not of good character by reason of habitual drunkenness, prostitution, perversion or other objectionable practices or is a member of a group whose beliefs or practices are not generally acceptable in Botswana; or

"*(c)* Has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has made a composition with his creditors and has not paid his debts in full; or

"*(d)* Has been convicted of any offence during the five years preceding the date of his application for registration which, in the opinion of the Minister, is serious enough to justify refusal of registration; or

"*(e)* By remaining in Botswana would, in the opinion of the Minister, be likely to prevent the employment of a citizen of Botswana in any business, trade, profession or other form of employment in which no special skills, qualifications or experience likely to be of benefit to Botswana are required; or

"*(f)* Is a citizen of a Commonwealth country whose law does not make equally favourable provision for the acquisition of citizenship of such country by citizens of Botswana.

"(2) Any decision by the Minister that a person is not entitled to registration by reason of coming within the provision of subsection (1) *(b)*, *(d)* or *(e)* shall be final and shall not be questioned in any Court."

Amendment of section 10 of Law No. 39 of 1966

3. Section 10 of the Citizenship of Botswana (Supplementary Provisions) Law, 1966, is amended by the deletion of subsection (3) thereof and by the substitution therefor of a new subsection as follows:

"(3) The Minister shall not deprive a person of citizenship under this section if he is satisfied that it is conducive to the public interest that that person should continue to be a citizen of Botswana."

Addition of section 20 to Law No. 39 of 1966

4. The principal law is amended by the addition immediately after section 19 thereof of a new section as follows:

"*Renunciation of Citizenship of Persons of Unsound Mind*

"20. For the purposes of section 29 of the Constitution the date upon which a person who is of unsound mind, and who is a citizen of Botswana and of some other country, shall cease to be a citizen of Botswana unless such person has complied with the requirements of that section shall be either the 31st December, 1970, or twelve months after such person shall have ceased to be of unsound mind, whichever is the later."

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[1] *Government Gazette, Extraordinary*, Vol. VIII, No. 2, of 6 January 1970.

[2] For extracts from the Constitution of Botswana, see *Yearbook on Human Rights for 1966*, pp. 38-50.

THE CONSTITUTION (AMENDMENT) ACT, 1970

ACT No. 25 OF 1970, ASSENTED TO ON 2 JULY AND ENTERED INTO FORCE ON 10 JULY 1970[3]

Amendment of section 9 of the Constitution of Botswana

2. Subsection (2) of section 9 of the Constitution is amended by the insertion immediately after the words "mineral resources," appearing in paragraph *(a)* thereof of the words "for the purpose of any census,".

Amendment of section 25 of the Constitution of Botswana

3. Section 25 of the Constitution is amended by the addition immediately after subsection (2) thereof of a new subsection as follows:

"(3) Where an Act of Parliament has prescribed circumstances in which a person shall not be entitled to registration as a citizen of Botswana a person shall not be so registered if at any time after his application any of the prescribed circumstances apply to him notwithstanding that such circumstances did not apply to him at the time of his application for registration.".

Amendment of section 26 of the Constitution of Botswana

4. Subsection (1) of section 26 of the Constitution is amended by the deletion of the words "has been married to a person who was at any time" appearing therein and by the substitution therefor of the words "is or has been married to a person who is or was at any time".

...

Repeal and replacement of section 111 of the Constitution of Botswana

6. The Constitution is amended by the repeal of section 111 thereof and by the replacement thereof with a new section as follows:

"111 (1) Subject to the provisions of this section and of section 112 ... of the Constitution, power to appoint persons to hold or to act in any office in the public service, to exercise disciplinary control over persons holding or acting in such offices and to remove from such offices shall vest in such person or persons as may be prescribed by Act of Parliament.

"...

"(3) Before any person or persons as may have been prescribed under the provisions of subsection (1) exercises power to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the President acting in accordance with the advice of the Judicial Service Commission such person shall consult with the Judicial Service Commission."

Repeal and replacement of section 112 of the Constitution of Botswana

7. The Constitution is amended by the repeal of section 112 thereof and by the replacement thereof with a new section as follows:

"112 (1) Any person who has been removed from office or subjected to any other punishment by the exercise of any powers conferred on any person under the provisions of section 111 of this Constitution may appeal to the Public Service Commission who may dismiss such appeal or allow it wholly or in part.

"(2) Subject to the provisions of subsection (3) every decision of the Public Service Commission under the provisions of this section or of section 113 of this Constitution shall be final.

"(3) Notwithstanding anything contained in subsection (2) if the Public Service Commission dismisses an appeal or allows it in part only the person who appealed may appeal to the President.

"(4) If any person appeals to the President in accordance with the Provisions of subsection (3) of this section the President shall either dismiss the appeal or shall order that it be heard by a tribunal appointed by the President, the Chairman of which shall be a person who holds or has held high judicial office or is qualified to be appointed as a judge of the High court.

"(5) If the President appoints a tribunal to hear an appeal in accordance with subsection (4) of this section the tribunal shall hear the appeal and shall advise the President whether or not the appeal should be allowed either wholly or in part, and the President shall act in accordance with that advice."

...

[3] *Government Gazette*, Vol. VIII, No. 39, of 10 July 1970. For extracts from the Constitution of Botswana, see *Yearbook on Human Rights for 1966*, pp. 38-50.

THE PUBLIC SERVICE ACT, 1970

ACT No. 26 OF 1970, ASSENTED TO ON 9 JULY AND ENTERED INTO FORCE ON 10 JULY, 1970[4]

Directions of President

9. The President may give such general directions as to the manner of exercise of the powers and duties under this Act as may appear to him to be necessary.

Disqualification for Appointment

10. (1) No person who has been convicted of an offence involving moral turpitude or who has been dismissed from the public service shall be appointed to any public office without the approval of the President.

(2) No person shall be appointed to public office unless he holds such qualifications as have been prescribed for appointment to that office: Provided that the provisions of this subsection may be waived with the approval of the President to facilitate the localisation of the public service.

(3) No person who is not a citizen of Botswana shall be appointed (other than on transfer or promotion) on pensionable terms to any public office except with the approval of the President.

(4) Subject to the provisions of subsection (3) no person who is not a citizen of Botswana shall be appointed to any public office unless the appointing authority is satisfied that no citizen of Botswana who is qualified and suitable for appointment is available and the President is satisfied that it would not be in the public interest for the office to remain vacant.

Criterion for Appointment

11. (1) In selecting candidates for appointment the appointing authority shall have regard primarily to the efficiency of the public service.

(2) When any public office is vacant the following persons shall, subject to satisfying any Scheme of Service laying down the qualifications for any public office, be qualified for appointment to such office in the following order of priority:

(i) Any officer who is a citizen of Botswana;

(ii) Any other citizen of Botswana;

(iii) Any officer, whether on pensionable or contract terms, who is not a citizen of Botswana;

(iv) Any other person who is not a citizen of Botswana but whose appointment to such office is approved under section 10 or deemed to be approved under section 12.

Appointment of Citizens of certain countries

12. The appointment of any person to any office shall be deemed to be approved if such person is a citizen of a country prescribed by the President as a country whose citizens may be recruited into the public service of Botswana without reference to him.

[4] *Ibid.*

BRAZIL

ACT No. 5,581 OF 26 MAY 1970

ESTABLISHING REGULATIONS CONCERNING THE HOLDING OF ELECTIONS IN 1970 AND PROMULGATING OTHER PROVISIONS[1]

Art. 1. The elections for office in the Chamber of Deputies, the Federal Senate and the State Legislative Assemblies for the terms beginning on 1 February 1971 shall be held simultaneously throughout the country on 15 November 1970.

Art. 2. The Superior Electoral Court shall, on the basis of the number of electors registered as of 30 June 1970, announce, within a period of 30 days from that date, the number of Deputies to the Federal Chamber and the Legislative Assemblies, in accordance with article 18, paragraph 6, and article 39, paragraph 2, of the Constitution.

Sole paragraph. For the purpose of calculating the number of electors, account shall be taken only of those registrations and transfers of electoral certificates already approved by the Electoral Judges or, at the recourse stage, by the Electoral Courts, not later than 30 June 1970.

Art. 3. The Regional Executive Committees of the political parties shall meet not later than 3 August 1970 to select their candidates for the offices of State Governor and Vice-Governor in the election provided for in article 189 of the Constitution of the Federative Republic of Brazil.

(1) When the candidates have been selected, a duly authenticated copy of the record of the meeting shall be submitted by a party delegate to the Regional Electoral Court within 48 hours.

(2) After receipt of the record has been acknowledged, the President of the Court shall publish it within 24 hours as an announcement in the *Diáro Oficial do Estado* for the information of all concerned.

(3) Objections to the choice of a candidate on the ground of ineligibility shall be brought before the Electoral Court in accordance with the procedure prescribed in the Ineligibility Act for opposing the registration of candidates.

Art. 4. If the Electoral Court considers any of the candidates for the office of State Governor or Vice-Governor to be ineligible, or if any candidate dies or is unavoidably prevented from standing for election, the Regional Executive Committee of the party concerned shall appoint a substitute within a period of 48 hours.

Sole paragraph. When a new candidate has been selected, the procedure established in paragraphs 1-3 of the preceding article shall immediately be followed, without prejudice to article 6 of this Act.

Art. 5. Registration of candidates for the offices of State Governor and Vice-Governor in the election to be held on 3 October 1970 shall be effected not later than 6 p.m. on 18 September 1970, in the presence of the officers of the respective Legislative Assemblies, by the submission of an application by the political party accompanied by:

I. A certified copy of the record of the meeting of the Regional Executive Committee at which the candidates were selected, the said copy to be checked against the original in the Office of the Secretary of the Regional Electoral Court;

II. The signed authorization of the candidate concerned, the signature to be certified by a notary public;

III. A certificate from the Regional Electoral Court attesting that the registrant enjoys his political rights and that he has had his electoral domicile in the State concerned for the two years immediately preceding the election;

IV. Proof of party membership as prescribed in article 4 of Supplementary Act No. 61 of 14 August 1969;

V. A declaration of property, specifying its origin and changes of ownership;

VI. A Certificate furnished by the Regional Electoral Court attesting that no objection has been raised to the choice of candidate made by the Regional Executive Committee (article 4) or that any such objection has been over-ruled.

Art. 6. In the event of a candidate's death or unavoidable inability to stand for election, the requirements specified in paragraphs I-IV of the preceding article shall be complied with within 10

[1] *Diário Oficial*, No. 97 of 26 May 1970.

days from the date of the election and the provisions of paragraph VI shall be waived.

Sole paragraph. In the cases referred to in this article, allegations of nullity or ineligibility may be submitted within 15 days from the date of the election, in accordance with the legislation in force; rulings must conform with the provisions of the Ineligibility Act relating to objections to the registration of candidates.

Art. 7. If, after the election for the offices of Governor and Vice-Governor, an elected candidate is declared ineligible, a new election shall be held within 10 days from the publication or notification of the final decision.

Art. 8. The candidates of the political parties for office in the Federal Senate, the Chamber of Deputies and the State Legislative Assemblies in the elections to be held on 15 November 1970 shall be selected at the Regional Conventions, convened by the respective Executive Committees.

(1) The municipal delegates, referred to in article 39 of Act No. 4,740 of 15 July 1965, shall be those who have been chosen at the Municipal Conventions for the election, held on 14 September 1969, of the Regional Executive Committees.

(2) The Municipal Regional Committees established after the date referred to in the preceding paragraph shall appoint delegates to the Regional Convention in conformity with article 3, paragraph 1, of Supplementary Act No. 54 of 20 May 1969.

(3) In the event of the removal, resignation or death of a delegate selected at the aforesaid Municipal Conventions, the Municipal Executive Committee shall appoint a substitute if there is no alternate.

(4) When, in the election for the Senate, there are two or three vacancies to be filled in a particular electoral district, the party Conventions shall reach their decision by a secret and single ballot, each delegate to the Convention being entitled to vote for as many candidates as there are vacancies to be filled.

(5) If the registration of a candidate for the office of senator or alternate has been rejected or if any such candidate is prevented by death or an unavoidable obstacle from standing for election, the Regional Executive Committee shall appoint a substitute within five days.

(6) Applications for the registration of candidates shall be duly submitted to the Regional Electoral Court not later than 6 p.m. on 25 August 1970.

(7) All applications for the registration of candidates, including those against which objections have been raised, shall be considered and those accepted shall be published, by:

I. The Regional Electoral Court, on 11 September;

II. The Superior Electoral Court, on 10 October.

Art. 9. In elections based on the proportional system, the number of candidates who may be registered by each party shall not exceed three times the number of vacancies to be filled.

Art. 10. Candidates of the political parties for the offices of Prefect, Vice-Prefect and Councillors in the municipalities in which elections are to be held on 15 November 1970 shall be selected at the Municipal Conventions, convened by the respective Municipal Executive Committees.

(1) In those municipalities in which the political parties have not established Executive Committees it shall be the responsibility of the Regional Executive Committee to convene the Municipal Conventions and to appoint delegates to represent it.

(2) Applications for the registration of candidates shall be duly submitted to the appropriate offices not later than 6 p.m. on 25 September 1970.

(3) All applications for the registration of candidates, including those against which objections have been raised, shall be considered and those accepted published by:

I. The Electoral Judge, on 8 October;

II. The Regional Electoral Court, on 22 October;

III. The Superior Electoral Court, on 6 November,

Art. 11. In those States in respect of which the Constitution provides that, if the offices of Governor and Vice-Governor become vacant, the election to fill the vacancies is to be held by direct vote, the aforesaid officials shall, in 1970, be elected, at a public meeting and by roll-call vote, by an electoral college composed of the members of the respective Legislative Assemblies.

(1) Once the results of the election are announced, the successful candidates shall assume office within the following 48 hours in order to complete the terms of their predecessors.

(2) The political parties, through the Regional Executive Committees, shall select their candidates for the election provided for in this article, and shall register them in the presence of the officers of the Legislative Assembly not later than 6 p.m. on the tenth day following the date on which the last vacancy occurred.

(3) Within ten days from the date of the election, the requirements specified in article 5, paragraphs I-IV, of this Act shall be complied with by the elected candidates.

(4) Where an allegation of nullity or ineligibility is made, the procedure prescribed in article 6, sole paragraph, of this Act, shall be followed.

Art. 12. Until 30 June 1970, registration of the births of Brazilian citizens shall be exempt from payment of the fine prescribed in article 48 of Legislative Decree No. 1,000 of 21 October 1969.

Art. 13. The fine referred to in article 8 of the Electoral Code (Act No. 4,737 of 15 July 1965) shall not apply to persons registered by 5 August 1970.

Art. 14. In the elections scheduled for 13 November 1970, the time-limit referred to in article 5 of Act No. 5,453 of 14 June 1968 shall not apply.

Art. 15. The Superior Electoral Court shall, within 30 days from the publication of this Act, issue the necessary instructions for its proper execution.

DECREE No. 66,872 OF 15 JULY 1970

PROMULGATING THE AGREEMENT ON CULTURAL CO-OPERATION BETWEEN BRAZIL AND INDIA[2]

The President of the Republic,

Whereas the Agreement on Cultural Co-operation concluded between the Federative Republic of Brazil and the Republic of India and signed at Rio de Janeiro on 23 September 1968 was ratified by Legislative Decree No. 642 of 1969,

And whereas the aforesaid Agreement entered into force on 26 June 1970 in accordance with article XXI thereof,

Decrees that the aforesaid Agreement . . . shall be executed and carried out to the fullest extent provided for therein.

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[2] *Ibid.*, No. 131 of 16 July 1970.

BULGARIA

NOTE*

I. New developments relating to the protection of the rights of citizens and socialist organizations

1. In 1970 the National Assembly of the People's Republic of Bulgaria passed an Act on Administrative Procedure (*Official Gazette*, No. 53, of 7 July 1970). The primary purpose of that Act is to provide citizens with additional legal means of protecting their rights in so far as they relate to the issue of administrative decisions relating to the rights of citizens and socialist organizations, appeals against them and application of them.

Chapter II of the Act on Administrative procedure contains provisions governing the procedure for the issue of the administrative decisions in question. In order to guarantee the parties the possibility of defending their rights when an administrative decision is issued and to facilitate the task of the administrative organ concerned, which must investigate all aspects of the case, the parties are notified of the initiation of the administrative procedure. They are entitled to present written and verbal explanations and objections, and to furnish evidence themselves or request that evidence be collected as of right. Once the relevant facts and circumstances have been established, the administrative organ will pronounce the proceedings closed and will issue the administrative decision in writing. The reasons for the administrative decision must be given.

As a means of ensuring the effectiveness of the defence, the Act provides for the possibility of appeal at two levels if an administrative decision is illegal or inappropriate. An appeal may be lodged with the superior administrative organ concerned not only against an administrative decision which has already been issued but also against a refusal by any administrative organ to issue an administrative decision required of it or to issue the document upon which the recognition or exercise of rights depends. An administrative appeal to the superior organ guarantees that the latter will be in a position to conduct an immediate investigation of the activity of its subsidiary organ, which in many cases precludes the necessity for an appeal to a court. The superior administrative organ must investigate the matter and take a decision within 7 days of receiving the appeal. If it considers that the administrative decision [against which the appeal was made] was illegal or inappropriate, it quashes the decision.

When the means of administrative recourse have been exhausted, the law provides for the possibility of appeal to the legal authorities. In the past, there have been some cases in which judicial appeals have been lodged against administrative decisions, but this has occurred only in isolated instances, on the basis of a special provision of the normative law. The new element in the Act on Administrative Procedure lies in the fact that it introduces judicial remedy on the basis of a general provision. The principle of judicial inquiry has been established for the purpose of providing an additional and more effective guarantee to safeguard the rights of citizens. When the administrative decision against which an appeal is lodged has been issued by a minister, the head of a central administrative department or the chief officer of the executive committee of a departmental people's council, it is the Supreme Court which is competent to deal with the case. The Supreme Court also hears appeals against administrative decisions that have been confirmed or amended by a minister or a departmental head having the rank of minister. It is only in these two cases that the Supreme Court is the only competent body to hear appeals. In all other cases appeals are heard by the Departmental Court. The hearing is conducted in public session by three judges in the presence of a law officer. The Court summons to appear before it the plaintiff who has lodged the appeal, a representative of the administrative organ which issued the decision that is the subject of the appeal, and any other parties concerned in the administrative procedure. The parties are entitled to the assistance of a lawyer. The Court is concerned only with establishing whether the administrative decision was or was not legal. If the Court quashes the decision, it refers the proceedings back to the administrative organ concerned, together with directions concerning the application of the law. These directions are binding on the administrative organ concerned, and the decision handed down by the Court is final. The decision may, however, be revoked by extraordi-

* Note furnished by Professor Anguel Angueloff, government-appointed correspondent, Sofia.

nary remedy or application for revision concerning judgements having the force of *res judicata*, under the terms of the Code of Civil Procedure.

The Act also contains provisions relating to the application of administrative decisions which have become final. These provisions ensure the proper application of the decision from the legal point of view; before proceeding to take coercive measures, the executive organ will give written notice to the persons against whom the aforesaid measures are to be taken. An appeal against illegal acts committed in connexion with the application of the administrative decision may be lodged with the organ which took the administrative decision in question; the appeal must be made within three days of the date when the decision begins to be enforced.

II. Extension of the rights of citizens in the sphere of education

2. The 1971 budget (*Official Gazette*, No. 101, of 20 December 1970) allocates the sum of 1,883,639,000 leva for the development of education, science and culture, and for social insurance, out of a total budgetary expenditure of 5,905,074,000 leva, i.e, 30 per cent of total expenditure. Additional material and financial resources have thus been earmarked to enable citizens to enjoy economic, social and cultural rights.

3. In 1970 the Ministry of Public Education and the Committee on Youth and Sports published regulations governing scholarships (*Official Gazette*, No. 73 of 15 September 1970). Under these regulations, the number of students eligible for scholarships and the amounts of the scholarships were increased. Conditions have thus been created which guarantee considerable progress in education, which is provided free of charge in the People's Republic of Bulgaria.

III. Ratification of the International Covenant on Economic, Social and Cultural Rights

4. By Decree No. 1199 of 23 July 1970 (*Official Gazette*, No. 60, of 30 June 1970) the Presidium of the National Assembly of the People's Republic of Bulgaria ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations.

BURUNDI

LEGISLATIVE DECREE No. 1/48 OF 10 JULY 1970 CONCERNING ARRANGEMENTS FOR THE GUARDIANSHIP OF CHILDREN PLACED IN OFFICIAL OR PRIVATE ORPHANAGES[1]

Art. 1. The guardianship of children placed in official or private orphanages may be transferred in accordance with the provisions of this Legislative Decree.

Art. 2. Guardianship transferred in accordance with the provisions of this Legislative Decree shall have the same effects as customary guardianship.

Art. 3. When a child is admitted to an orphanage, the orphanage authorities shall invite the person exercising parental authority or acting as guardian, whether *de jure* or *de facto*, to sign a statement acknowledging that he has been informed that guardianship of the child placed in the orphanage may be transferred on the conditions laid down in this Legislative Decree and that such guardianship will have all the effects of national custom.

In the case of children placed in an orphanage before the entry into force of this Legislative Decree, the orphanage authorities shall, as soon as possible, supply the orphanage with the statement referred to in the preceding paragraph.

Where the person exercising parental authority over the child or acting as his guardian, whether *de jure* or *de facto*, is illiterate, he shall affix his right thumb-print at the bottom of the statement, which shall be countersigned by two adult witnesses who are not connected with the administration of the orphanage.

...

Art. 6. Transfer of guardianship shall be subject to the following conditions:

(1) The ward shall be not less than four years of age;

(2) The ward must have spent at least six months in the orphanage;

(3) The guardian shall be not less than 25 and not more than 55 years of age;

(4) The age difference between the guardian and the ward shall be at least 10 years;

(5) A married person may accept guardianship of a ward only with the consent of his spouse.

Art. 7. Proceedings relating to transfer of guardianship shall fall within the jurisdiction of the provincial courts. The competent court shall be the court for the place in which the orphanage is situated.

Art. 8. Applications for transfer of guardianship shall be drawn up jointly by the person in charge of the orphanage and by the guardian.

Art. 9. The court shall transfer guardianship only after ascertaining that no relative of the child is prepared to act as his guardian, determining that the conditions enumerated in article 6 of this Legislative Decree exist, and satisfying itself that the character and income of the guardian are such that he will be able to provide properly for the maintenance and education of the ward.

Art. 10. Any order transferring guardianship shall, within a period of one year and upon the application of the guardian, be confirmed by the court which transferred the guardianship.

If, one year after the order was made, the guardian has not yet applied for confirmation, the presiding judge of the competent court shall *ex officio* enter the case in the cause list.

The court shall confirm the guardianship only after satisfying itself that the ward, in living with the guardian, enjoys conditions conducive to the development of his personality. The court shall on that occasion be obliged to give a hearing to the ward.

If the guardianship is not confirmed and the ward has not attained the age of 18, the court shall order his admission to an orphanage.

Art. 11. Guardianship, whether or not confirmed, may be revoked in the following two cases:

(1) Upon the application of the *ministère public*, where the guardian fails to fulfil his obligations concerning the maintenance and education of the ward;

(2) Upon the application of the guardian, where the ward, by his ingratitude, shows that he is undeserving of the benefits he is receiving or has received.

[1] *Bulletin officiel du Burundi*, No. 8/70, of 1 August 1970.

Where revocation of guardianship involves a ward below the age of 18, the court shall order his admission to an orphanage.

...

Art. 15. The present Legislative Decree enters into force on the day of its signature.

LEGISLATIVE DECREE No. 1/53 OF 31 JULY 1970 CONCERNING THE REGULATION OF CINEMATOGRAPHIC PERFORMANCES[2]

Art. 1. Decrees of the President of the Republic concerning admission to cinematographic performances open to the public may, irrespective of the penalties established in the decree of 6 August 1922, provide for the closure of the establishment in which an offence has been committed, for a period of not more than three months.

Art. 2. The aforesaid measure shall be ordered by the court, which may authorize its immediate execution notwithstanding any application for reconsideration or appeal. The defendant, if convicted, may request the appeals court to suspend execution of the sentence.

Art. 3. Article 9 of the decree of 6 August 1959 establishing the code of criminal procedure shall not, in matters relating to this legislative decree, apply to offences for which penalties have been imposed by the President of the Republic.

Art. 4. Except in the case of a serious offence, the Government shall not incur any liability for the destruction or deterioration of films which are submitted for inspection to commissions established by the President of the Republic.

Art. 5. The inspection of films by the aforesaid commissions may be subject to a tax, in respect of which the amount and methods of payment shall be established by the President of the Republic.

Art. 6. The decree of 25 June 1954 is hereby abrogated.

Art. 7. The present Legislative Decree enters into force on the day of its signature.

[2] *Ibid.*

PRESIDENTIAL DECREE No. 1/54 OF 31 JULY 1970 CONCERNING CINEMATOGRAPHIC PERFORMANCES[3]

Art. 1. A commission is hereby established to inspect cinematographic films which are to be shown to the public.

...

Art. 3. No person may organize public cinematographic performances unless the programme in question is exclusively composed of films whose public exhibition has been authorized by the Commission.

Children may not be admitted to public cinematographic performances unless the programme is exclusively composed of films which have been authorized for exhibition in the presence of children of the age group in question.

The term "films" shall apply to both fiction and documentary films, newsreels and trailers.

Art. 4. Any performance, irrespective of whether there is an admission charge or not, which does not have the character of a private showing shall be considered a public showing. Private showings are those which may be attended only by individually invited persons and which are held in a private dwelling.

Art. 5. The Commission may:

Authorize the public exhibition of a film;

Authorize the public exhibition of a film, provided that only persons over 18 years of age are present. In special cases, the Commission may set a different age limit; or

Refuse authorization for the public exhibition of a film.

Art. 6. Cinematographic performances must be announced to the public; the words "children admitted" or "children not admitted" must be prominently inscribed at the entrance of cinematographic establishments and on any poster, announcement or programme.

Art. 7. Films whose exhibition in the presence of persons aged less than 18 years has not been authorized by the Commission may be shown only in premises designed in such a way that the films cannot be seen from the outside.

...

Art. 10. It shall be the responsibility of the Commission to determine whether the exhibition

[3] *Ibid.*

of a particular film will be detrimental to public order.

It shall, in particular, refuse its authorization when it considers that a film:

May offend the modesty of persons who see it;

Presents crime, moral laxity or racial hatred in a favourable light;

Constitutes an incitement to revolt.

With regard to films to which young people may be admitted, the Commission shall in particular protect traditional moral values and shall ensure respect for the emotional sensibility of children.

Art. 11. Any film for which authorization has been refused may, after modification, be resubmitted to the Commission, provided that the application completed for that purpose is accompanied by a precise indication of the changes which have been made in it.

The same provision shall apply to films which have been authorized for exhibition to adult audiences but in respect of which the applicant seeks to obtain an authorization which is valid for all audiences.

. . .

Art. 18. No person shall:

(1) Resubmit to the Commission, under another title, a film which has already been inspected;

(2) Leave in circulation films for which authorization has been revoked by the Commission; as soon as the distributors have been notified of such revocation, they shall be required immediately to return the script in question together with the certificate issued to them;

(3) Make any changes in the authorized content of films as long as they are intended for public exhibition.

. . .

Art. 24. The present Presidential Decree shall enter into force fifteen days after the date of its posting up.[4]

[4] The Presidential Decree was posted up on 4 August 1970.

MINISTERIAL ORDER No. 093/121 OF 28 SEPTEMBER 1970 ENTRUSTING THE PRESS DEPARTMENT WITH RESPONSIBILITY FOR THE PUBLICATION OF A DAILY INFORMATION BULLETIN[5]

Art. 1. The Press Department is hereby entrusted with responsibility for the publication of an information bulletin entitled *FLASH INFOR.*

Art. 2. The bulletin shall appear daily and shall be intended to contribute to the dissemination of information concerning Burundi and the objectives which its Government has set itself.

The bulletin shall, from day to day, disseminate news of Burundi as well as any international news that may contribute to the instruction and education of the general public.

. . .

Professional Staff

Art. 5. Responsibility for editing and publishing the bulletin *FLASH INFOR* shall be entrusted to the director of the Press Department, assisted by a team of officials in his department . . .

Art. 6. The director of the Press Department may secure the collaboration of correspondents in the provinces or abroad. The Minister of Information shall establish the basis for the remuneration of the aforesaid correspondents.

Art. 7. Editors and reporters engaged in work related to the bulletin shall be provided with press credentials and shall enjoy the benefits deriving therefrom.

. . .

Special provisions

Art. 9. With a view to contributing to the establishment of a pan-African press agency, as envisaged by the States members of the Organization of African Unity, the Press Department shall, through the bulletin *FLASH INFOR*, prepare the bases for a press agency at the national level.

. . .

[5] *Bulletin officiel du Burundi*, No. 10/70, of 1 October 1970.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

NOTE[1]

RESOLUTION OF THE TWENTY-SEVENTH CONGRESS OF THE COMMUNIST PARTY OF BYELORUSSIA ON THE REPORT OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA (FEBRUARY 1971)

EXTRACTS

The Congress of the Communist Party of Byelorussia notes that in the period under review all branches of industrial production of the Republic developed rapidly. The five-year plan was fulfilled ahead of time for the main indicators. Gross industrial output increased 1.8 times as against the 1.7 times envisaged in the directives of the Twenty-Third Congress of the Communist Party of the Soviet Union. Goods were manufactured over and above the plan to a value of hundreds of millions of roubles, including 600 million roubles of consumer goods. The target was exceeded for productivity, which rose by 39 per cent during the five-year period.

In accordance with the directives of the Twenty-Third Party Congress and the resolutions of the March (1965) and subsequent plenary meetings of the Central Committee of the Communist Party of the Soviet Union, significant success was achieved in agricultural development in the Republic. Capital investment in agriculture was stepped up. There was an improvement in the material and mechanical resources and economic structure of collective and State farms; there was a rise in the profitability of the main sectors. All collective and State farms are supplied with electricity from the State energy system. Extensive measures have been taken to concentrate and intensify specialization, all-round mechanization of agricultural production, "chemification" and soil improvement.

The gross output of collective and State farms over the last five years was 45 per cent higher than in the previous five years, while productivity rose by 50 per cent.

The Congress notes that the most important requirement for the successful solution of the problems posed by the scientific and technological revolution is a raising of people's educational, cultural and technological standards. An important step in that direction was the further development of higher and specialized secondary education in the Republic. Over the five-year period, higher and specialized secondary educational establishments supplied the economy with 233,000 young specialists – 75 per cent more than in the previous five-year period. The vocational and technical education system trained 246,000 qualified workers. A beginning was made in training personnel for the new specialized fields opened up by the demands of scientific and technological progress.

The Congress draws the attention of Party and Soviet organs, and of Republican ministries and departments to the need for a further broadening and improvement of the content and form of instruction in all types of educational establishment, having regard to the demands of scientific and technological progress and the need to improve the quality of specialist training. In the current five-year period, the transition to universal secondary education for young people must be completed, as must the introduction of the new curricula in schools. Within the vocational and technical education system, more workers must be trained for occupations requiring a general secondary education. In higher and specialized secondary educational establishments, enrolment in the specialized fields opened up by the demands of scientific and technological progress must be increased, and favourable conditions created to attract gifted and capable young people, particularly from among manual and collective farm workers. The system of instruction by evening class and correspondence courses must be improved. Measures must be taken to augment the material and technical resources of educational establishments and to provide their laboratories and special purpose rooms with the latest equipment . . .

The success achieved in developing the economy has made it possible to take major steps, in the period under review, to increase the material well-being of the working people of the Republic and improve cultural and social facilities for the public. The national income rose more than 1.5

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

times. Real *per capita* income rose by 37 per cent. The average monthly pay of manual and non-manual workers rose by 31.6 per cent. Collective farm workers' income from the communal in cash and in kind rose 1.6 times. A guaranteed cash remuneration was introduced for collective farm workers, together with pension arrangements and social security. For some categories of workers, pensions were increased, the pensionable age was lowered, and the length of paid holidays was increased. Privileges for disabled war veterans and disabled workers were expanded. A major social step was taken by introducing a five-day working week with two days off.

State and co-operative retail trade turnover rose by 69 per cent. The network of schools, cultural and educational establishments, medical facilities, therapeutic and prophylactic institutions, sports and pre-school facilities was expanded.

Housing construction is proceeding apace. Over the five-year period working people acquired more than 20 million square metres of housing in towns, workers' settlements and villages – 32 per cent more than in the previous five-year period. During this period, about 2 million people, or one fifth of the population of the Republic, moved into new apartments or improved their housing conditions.

The Congress of the Communist Party of Byelorussia enjoins Party, Soviet, economic and trade-union bodies to implement more resolutely the Party's demands to improve the material well-being and the cultural and social facilities of the population.

The Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR must give ministries and departments and local Party, Soviet and economic bodies greater control over and responsibility for the complete fulfilment, in the current five-year period, of the plans for the construction of housing, schools, enterprises providing household services and trading enterprises, children's institutions, medical facilities and cultural and educational establishments. They must ensure a rational use of State capital made available for those purposes and must attract funds from enterprises and State and collective farms. They must encourage in every way co-operative housing construction, and assist individual builders in villages, small towns and workers' settlements.

Through a significant expansion of the network of enterprises providing household services, their equipment with up-to-date high-output machinery, and an improved use of production capacity, the necessary material and technical resources must be created to provide the urban and rural population with household services of every kind. The volume of household services is to be increased under the current five-year plan 2.2 times for the Republic as a whole and 3.2 times for rural areas.

The Ministry of Health of the Byelorussian SSR, Party, Soviet and trade-union organs are to improve medical services for the working people and treatment for them at sanatoria and spas. Specialized clinical treatment, prophylaxis and strict supervision over the observance of sanitary and hygienic regulations in towns and populated areas must become the main activity of medical establishments. Heads of ministries and departments, factories and plants are to encourage the construction of preventive clinics out of enterprise funds. Strict observance of the regulations on protecting the environment from pollution must be ensured.

Party and Soviet organs, the Committee for Physical Culture and Sport of the Council of Ministers of the Byelorussian SSR, the Byelorussian Council of Trade Unions, the Central Committee of the Byelorussian Young Communist League, ministries and departments of the Republic must improve their work to ensure the widespread introduction of physical culture and sport into the everyday life of the working people. An increase in the skill of Byelorussian sportsmen must be achieved. Particular attention must be given to fulfilling the plans for the construction of sports facilities. In the current five-year period, sufficient physical education teachers must be trained to meet all the needs of general and sports schools for children and young people.

FROM THE DOCUMENTS OF THE TWENTY-SEVENTH CONGRESS OF THE COMMUNIST PARTY OF BYELORUSSIA (FEBRUARY 1971)

The report of the First Secretary of the Central Committee of the Communist Party of Byelorussia, Comrade P. M. Masherov, noted in particular that:

During the last five-year period, the Soviet people have set an example of elevated political activity and labour heroism; under the leadership of the Party, they have achieved new notable successes in developing all branches of the economy and performing social tasks. The community of ideas of our society was strengthened still further, the well-being of the people was increased, and their spiritual life was enriched. Soviet socialist democracy developed further.

As to the economy of the Republic, the period under review is characterized by a dynamic growth of social production, an increase in the scale of capital construction, and a greater utilization of intensive economic development factors.

The efforts of the Communist Party and the working people of Byelorussia were crowned with great success: the five-year plan was fulfilled ahead of time for the main indicators. The average

annual growth rate, both of the social product and of the national income, under the eighth five-year plan was more than 9 per cent, which is somewhat higher than in the previous five-year period.

A successful solution to the problems posed by the scientific and technological revolution and by today's highly mechanized and automated production is unthinkable without an increase in the level of general and specialized knowledge of the population. This will place new and greater demands on establishments of secondary, higher, and vocational and technical education.

Universal eight-year education and the further development of secondary education were an important step in that direction. During the past five-year period about 1.4 million boys and girls completed secondary and eight-year education in the Republic. Over 84 per cent of those leaving eight-year day-schools are continuing their education in various secondary educational establishments.

The training of qualified personnel within the vocational and technical education system has been substantially expanded and has taken on a new quality. During the last five years 246,000 workers have received such training. At present 83,000 young men and women are studying more than 240 specialized subjects.

In 1969, a training system was introduced in the Republic whereby workers receive vocational and general secondary education simultaneously. There are now 21 such training colleges. By the end of the five-year period, there should be at least 70.

The current five-year period will see the completion of the transition to universal secondary education for young people and the introduction of the new curricula in mass schools. The tasks of the secondary school must be viewed in the light of the steadily growing needs of the economy for workers in the mass trades. Pupils must be equipped with a knowledge of the fundamentals of production; vocational guidance must be improved, with due regard for individual inclinations.

In improving the system of universal education, it must be borne in mind that the technological re-equipment of the economy makes the raising of the education and technical standards of the adult population an absolute necessity. This is an important social problem, to which the whole of our Party organization must devote its attention.

The quality of training of specialists with higher and intermediate qualifications must also be improved. Higher educational establishments and technical colleges must give their students a thorough grounding of theoretical and practical knowledge and make them highly educated persons, capable of managing modern production and possessing the habit of scientific creativity and the ability to view their responsibilities through the eyes of researchers and creators. In the current five-year period, higher and specialized secondary educational establishments of the Republic must widen their intake of young people in such specialized fields as applied mathematics, computer technology, civil engineering, mechanical engineering, instrumentation and agricultural mechanization.

Special attention must be given to filling higher educational establishments and providing favourable conditions for the enrolment of gifted and capable young people, especially manual and collective farm workers. There must be an improvement in the work of the preparatory departments, in which more than 2,000 young production workers are studying now in the Republic's higher educational establishments.

A further raising of the political, general educational and technological standards of young people and all working people is a vital condition for the acceleration of scientific and technological progress and the application of its achievements in all spheres of the life and activity of our people.

The policies of the Leninist Party and our plans for the development of the economy have one principal purpose – to create the optimum conditions for Soviet people to live and work creatively.

The achievements in the field of social development can be seen primarily in the steady rise in the national income. Last year it reached almost 10 thousand million roubles in Byelorussia and exceeded the 1965 level by more than one and a half times. While the accumulation fund increased significantly, more than two thirds of the national income was used for personal consumption. As envisaged by the Twenty-Third Congress of the Communist Party of the Soviet Union, in the last five-year period the minimum wage of manual and non-manual workers was raised. The wages of middle-income construction workers and of those in building materials undertakings rose, and the pay scales for machine-tool operators were raised. In all, as a result of direct pay increases, almost one and a half million people in the Republic received an appreciable addition to their budgets.

A significant step forward was also made in raising the standard of living of collective farm workers. Their income from the communal undertaking increased by 60 per cent.

The standard of living of the people in our country is determined not only by wages. Social consumption funds are an important means of increasing the material well-being and culture of the Soviet people. Last year they exceeded 2 thousand million roubles, which was equal to an average of 223 roubles for each person in the Republic. There was an increase in appropriations for the development of public education and culture, the training of personnel and upbringing of children, and for public health and social security. For many citizens there were increased pensions, and the privileges available to disabled war veterans and disabled workers were extended.

The Central Committee of the Communist Party of Byelorussia adopted a resolution by which the housing and living conditions of 77,000 disabled veterans of the Great Patriotic War and families of soldiers who died in the war were improved. Over

the past five years, some 4,000 "Laporozhets" cars and several thousand motorized invalid carriages were provided free of charge to disabled war veterans. Many disabled persons and families of soldiers and partisans killed in the war receive substantial help from production collectives. This great and noble work should be developed and supported in every way.

Both the results of the past five-year plan and the draft directives for the next five-year period fully express the noble goal: everything in the name of man, everything for the good of man.

In the next five-year period, as previously, the increase in the national income will result in a rise in the people's standard of living. This will make it possible to implement an extensive series of social measures. Wages will be increased and social consumption funds will be further expanded. The income of collective farm workers from the communal undertaking will rise by 42 per cent.

The Communist Party and the Soviet State are devoting enormous sums to increasing the construction of housing, schools and children's establishments. In the last five-year period alone, more than 20 million square metres of housing were built in the Republic. In fact, one person in every five celebrated a move. New teaching blocks and halls of residence have been brought into occupancy in higher educational establishments, as have dozens of schools and many kindergartens and crèches.

In the next five-year period, the construction of housing and social and personal facilities in Byelorussia will increase significantly. In towns and in workers' settlements no less than 22 million square metres of housing are scheduled to be built.

A wide range of social problems is associated with the development of public health protection. In Byelorussia during the five-year period 26 hospitals, 17 polyclinics and 79 pharmacies were built and many skilled doctors were trained. Medical establishments were better equipped with the latest equipment and technology. All this naturally helps to preserve and strengthen the health of the Soviet people.

In the current five-year period, the number of hospital beds is to be increased by 12,300, and 40 hospitals, 21 polyclinics and other medical establishments are to be built; at a cost of 120 million roubles. In addition to more extensive capital construction and more effective technical re-equipment of medical establishments, medical science must be firmly and consistently brought out of the laboratories and institutes and into the sphere of prevention, diagnosis and treatment.

Nature has a beneficial effect on people's health; its resources must be husbanded and treated carefully. In recent years a comprehensive approach has been evolved in the Republic to the question of the use of natural resources.

It is in the social policy of the Party and in a concern for man that the real humanism of our society is shown. The Party consistently follows a course of satisfying more completely the material and spiritual needs of the Soviet people, raising their standards of education and culture, and removing the basic differences between intellectual and physical labour, and between the living conditions of the urban and rural populations.

In the past five-year period, there was a significant broadening of the scope and coverage of ideological work. Three theatres, 860 clubs and houses and palaces of culture, 1,500 libraries and 11 museums were opened; 1,464 cinema installations were put into operation, and 37 cinemas were built. Many new printing works were built. About 10,000 books and brochures were published in the Republic, totalling almost 113 million copies.

The path covered by the Communist Party of Byelorussia and the working people of the Republic over the past five-year period and the results achieved evoke a feeling of satisfaction and pride. In all fields of economic and cultural development and in all spheres of public life qualitative progress has been made, which is convincing proof of the massive capabilities and great advantages of our social and State system.

The report of the Chairman of the Council of Ministers of the Byelorussian SSR, Comrade T. Y. Kiselev, said in particular:

The goal of further substantial improvement in the standard of living of the Soviet people will be achieved on the basis of the steady growth of social production, the rapid development of agriculture, the diversification of consumer goods and the development of services.

The national income of the Byelorussian SSR will rise over the period 1971 to 1975 by 43 to 45 per cent and real *per capita* income will increase 1.3 times. It is planned to increase the average wage of manual and non-manual workers by 24 per cent and that of collective farm workers by 40 per cent. Payments and benefits to the population from social consumption funds will go up by almost 1.4 times.

Because of the rise in personal incomes, an increase of more than 40 per cent in the volume of retail trade is envisaged in the next five-year period. There will be a substantial expansion of the public catering network, especially in rural areas; its turnover will increase almost one and a half times.

As in the previous five-year period, household services to the population will be expanded rapidly. The volume of such services will increase about 2.2 times and 3.2 times in rural areas.

There is a broad programme of housing construction. It is proposed to build, using all sources of finance in towns and workers' settlements, collective farms and State farms, a total of about 22 million square metres of housing, or nearly two million square metres more than in the period 1966-1970.

During the next five-year period, it is proposed to achieve further comprehensive development of public education and culture. The transition to universal secondary education for young people will be completed. Schools will be built to provide 257,000 places. The number of school boarding units for children in rural areas will be increased.

The training of personnel with higher and intermediate qualifications for all branches of the economy and culture will be increased. At present higher educational establishments are preparing specialists in 165 subjects and the technical colleges in 185 subjects. In the current five-year period, educational establishments in Byelorussia will train more than 120,000 specialists with higher education or 1.5 times more than in the previous five-year period, and 180,000 with secondary education, an increase of 1.2 times. There will be a significant increase in the training of specialists in computers, automatic control systems, applied mathematics, the organization of mechanical economic data processing, etc. For the further development of higher and secondary education in the Republic, the construction of new teaching blocks, halls of residence and student canteens must be speeded up.

The training of qualified workers in the vocational and technical education system will be expanded. At present there are 152 urban and rural vocational and technical schools and colleges, and three industrial and teacher-training colleges, giving instruction for more than 240 different occupations. They train 57,000 people every year.

In the current five-year period, new schools and colleges are to be built with 24,000 places and the number of persons trained there is to be increased to 71,000.

In the next five-year period pre-school establishments with 67,000 places are to be built. The number of children enrolled will increase 1.3 times.

In order to satisfy more fully the spiritual needs of the people, there will be a further development of the press, television, broadcasting, literature and art. The material and technical resources of cultural establishments will be augmented; new clubs, libraries and cinemas will be opened.

During the five-year period, there will be a considerable expansion of the network of therapeutic and prophylactic, convalescent, health and spa establishments. They will be better supplied with up-to-date equipment and will have larger numbers of qualified personnel. It is planned to build hospitals with about 12,400 beds.

Social security arrangements will be improved. At present there are about 1.7 million pensioners in the Republic, including more than 700,000 collective farm workers. In 1970, expenditure on social security and insurance amounted to more than 700 million roubles, which was 294 million roubles more than in 1965. In the next five-year period, expenditure for these requirements will go up by 160 million roubles.

In the present five-year period, conditions will be created for a broader development of all types of physical culture and sport. New sports installations will be constructed and the use of existing facilities will be improved. Tourism will be expanded.

REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON THE RESULTS OF THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1970

EXTRACTS

In 1970 the national income of the Byelorussian SSR was 8 per cent higher than in 1969. The real income of the population also rose.

In 1970 the average number of manual and non-manual workers employed in the national economy of the Republic was over 3 million, an increase of 5 per cent over 1969. Average monthly cash earnings during the period rose by 4.6 per cent.

Collective farm workers' pay in 1970 was 4 per cent higher than in 1969. In 1970 the population of the Republic received grants and benefits from social consumption funds amounting to more than 2,000 million roubles, or 7 per cent more than in 1969. These funds provided free education and medical care, pensions, allowances, students' grants, free or reduced-rate passes to sanatoria and rest homes, paid vacations, upkeep of kindergartens and crèches and other services . . . Social security was introduced for collective farm workers, providing benefits for temporary disability, and sanatorium and resort services for rural workers.

State and co-operative retail trade turnover for 1970 was 5,230 million roubles, an increase of 10 per cent over 1969 in comparable prices. The retail turnover of consumer co-operatives trading in rural areas amounted to 1,976 million roubles in 1970 and also rose by 10 per cent during the period.

The 1970 plan for retail turnover was fulfilled by 101.8 per cent.

The volume of household services provided to the population was 16 per cent higher than in 1969.

More than 87,000 new well-appointed apartments and individual houses with a total floor space of 4.3 million square metres were brought

into occupancy by State and co-operative enterprises and organizations, collective farms and the general public in towns and rural localities of the Republic. About 420,000 persons moved into new dwellings or improved their housing conditions in existing ones. In the past year, State and collective farm funds were used to finance the construction of new general education schools providing 49,000 places, children's pre-school establishments providing 20,000 places, a significant number of hospitals and polyclinics, and other cultural and social facilities.

Work continued on public amenities in towns and villages. Over the past year, a gas supply was laid on to more than 132,000 apartments. The annual plan for supplying apartments with gas was over-fulfilled.

Further progress was made in developing national education, science and culture.

Some 2.9 million persons received instruction of one kind or another. Of this total, 1,858,400 were taught in general education schools, 140,000 in higher educational establishments, 146,100 in technical colleges and other specialized secondary educational establishments, and 89,000 people in vocational and technical colleges and schools.

One hundred and eighty-one thousand four hundred pupils completed their eight-year schooling and 104,200 completed their general secondary education. In the schools for workers and young people from rural areas 14,600 people received an eight-year education and 22,500 received a secondary education.

There were 166,000 children attending extended-day schools and groups, or 7 per cent more than at the beginning of the school year 1969/70.

Attendance at permanent crèches and kindergartens totalled over 274,000, or 14,000 more than in 1969. In addition, 139,000 children attended seasonal children's establishments.

More than 734,000 children and adolescents spent their holidays in pioneer and school camps, children's sanatoria, at tourist and excursion centres or went away during the summer period for country vacations at rural resorts with children's establishments.

The Republic's higher educational establishments and technical colleges turned out 56,600 young specialists in 1970 — 20,600 with higher education and 36,000 with specialized secondary education. The number of persons graduating from higher educational establishments and technical colleges rose by 4,700 or 9 per cent compared with the previous year.

Thirty thousand four hundred students were admitted to higher educational establishments and 45,400 to specialized secondary educational establishments.

Vocational and technical colleges and schools trained 58,000 young qualified workers during the year. Many manual and non-manual workers, and also collective farm workers, received training or improved their qualifications through direct in-service individual or group apprenticeship or training courses. In 1970 about 630,000 persons received instructions in this manner.

At the end of the year about 580,000 specialists with higher and specialized secondary education were employed in the national economy.

There were 22,000 scientific workers at the end of 1970, of whom 6,000 held the degree of doctor or candidate of science.

At the end of 1970 there were more than 6,000 cinema installations in the Republic. Attendances for the year totalled more than 132 million.

In 1970 public medical services continued to improve. At the end of 1970 the number of doctors practising in all branches of medicine was more than 23,000.

There was an increase in the number of beds in hospitals, sanatoria, preventive centres and rest homes.

On 1 January 1971 the population of the Byelorussian SSR was 9.1 million.

ACT OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 24 DECEMBER 1970 CONCERNING THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1971

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 1971 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 approve the following main indicators of the State plan for the development of the national economy of the Byelorussian SSR in 1971:

	Percentage growth compared with 1970
National income produced	8
Industrial output	6.3
Including:	
Production of means of production	5.1
Production of consumer goods	7.3

Article 3. To achieve in 1971 the following increases over the figures for 1970:

	Per cent
Real *per capita* income	5
Volume of State and Co-operative retail trade	8.2
Household services for the population	20.2
Dwellings brought into occupancy (total floor space) using capital investment by the State and funds of house-building co-operatives	4.8
Enrolment in pre-school establishments financed from the State budget	7.9
Enrolment in extended-day schools and groups	5.2
Enrolment in higher educational establishments	1
Enrolment in specialized secondary educational establishments	4.8
Number of hospital beds	2.6

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 1971 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 take appropriate decisions on the subject.

ACT OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 24 NOVEMBER 1970 CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1971

EXTRACTS

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

Article 1. To approve the State budget of the Byelorussian SSR for 1971 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 3,072,356,000 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 1971 at the sum of 2,845,512,000 roubles.

Article 3. To allocate a total of 1,662,411,000 roubles under the State budget of the Byelorussian SSR for 1971 for the financing of the national economy: continued development of heavy industry, construction, light industry, the food stuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Article 4. To allocate a total of 1,313,015,000 roubles under the State budget of the Byelorussian SSR for 1971, including 257,013,000 roubles under the State social insurance budget, for social and cultural activities: schools to provide universal education, technical colleges, higher educational establishments, scientific research institutions, vocational and technical colleges and schools, libraries, clubs, theatres, the press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

ACT OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 24 NOVEMBER 1970

Confirmation of the land code of the Byelorussian SSR

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

Article 1. To confirm the land code of the Byelorussian SSR, which shall enter into force on 1 July 1971.

Article 2. To request the Presidium of the Supreme Soviet of the Byelorussian SSR to establish the arrangements for the entry into force of the land code of the Byelorussian SSR and to bring the legislation of the Byelorussian SSR into accord with the code.

LAND CODE OF THE BYELORUSSIAN SSR

EXTRACTS

The Great October Socialist Revolution did away with the semi-feudal land system of Czarist Russia, which condemned the peasantry to poverty and acted as a brake on the development of the country's forces. The decree "On Land" of the second all-Russian Congress of Soviets of 26 October (8 November) 1917 and subsequent legislation in the Byelorussian SSR abolished private ownership of land forever; all land became public property and was handed over without payment to the working people for their use.

State ownership of land, which came about as a result of nationalization, lies at the basis of land relations in the USSR, of which the Byelorussian Soviet Socialist Republic forms a part on the basis of a voluntary union and equal rights with the other Union Republics. Land, which under private ownership served as an instrument for the exploitation of man by man, is used in the USSR to develop the productive forces of the country in the interests of the whole people.

State ownership of land played an enormous role in ensuring the victory of socialism in the USSR. It made possible the most expedient distribution of all branches of the national economy and was one of the most important prerequisites for the change-over to socialist forms of land utilization.

With the creation, in the course of socialist construction, of conditions for the mass collectivization of scattered individual farms, the peasantry, under the leadership of the Communist Party and with every possible help and support from the working class, set out on the road to socialism. As a result of the implementation of the Leninist co-operative plan and the victory of the collective farm system, a fundamental solution was provided to the peasant question.

State ownership of land aids the creation in our country of the material and technological bases of communism, the gradual change-over to communist social relations and the elimination of the difference between town and country.

Land, Soviet society's most important resource, is the principal means of production in agriculture and the spatial basis for the distribution and development of all branches of the national economy. A scientifically-based and rational utilization of all land, its conservation and a maximum increase in soil fertility are the goals of the whole people.

Section I

General provisions

Chapter I

FUNDAMENTAL PROVISIONS

Article 1. Purposes of the land legislation of the Byelorussian SSR

The purposes of the land legislation of the Byelorussian Soviet Socialist Republic are the regulation of land relations in order to ensure a rational utilization of land, to create conditions for increasing its efficiency, to protect the rights of socialist organizations and citizens and to strengthen legality in the sphere of land relations.

...

Article 3. State ownership of land

In accordance with the Constitution of the USSR and the Constitution of the Byelorussian SSR, land is State property, that is, it belongs to the whole people.

Land in the USSR is the exclusive property of the State and no right to it other than the right to use the land shall be granted. Any acts which overtly or covertly infringe the right of State ownership of land shall be prohibited.

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Article 8. Land users

The right to use land in the Byelorussian SSR shall be granted to:

Collective farms, State farms and other State co-operative and public agricultural undertakings, organizations and establishments;

Industrial, transport and other State, co-operative and public non-agricultural undertakings, organizations and establishments;

Citizens of the USSR.

In accordance with the fundamental principles of the land legislation of the USSR and the Union Republics, the right to use land may, in the cases provided for by the legislation of the USSR, also be granted to other organizations and persons.

Article 9. Right to use land without charge

The right to use land shall be granted without charge to collective farms, State farms and other State, co-operative and public undertakings, organizations and establishments and citizens of the USSR.

Article 10. Periods of land use

The right to use land shall be granted for unlimited periods or temporarily.

Unlimited (permanent) use shall mean land use without a previously established time-limit.

Land occupied by collective farms shall be made over to them for use for an unlimited period, that is, in perpetuity. Temporary use of land may be short-term (up to three years) or long-term (from three to ten years). Where it is necessary for production reasons, these periods may be extended up to the respective limits set for short-term or long-term temporary use. Extensions of periods for the temporary use of land shall be effected by the organs which granted the right to use the land.

For certain types of land use, longer periods of temporary use, not exceeding 25 years, may be established by the Council of Ministers of the Byelorussian SSR.

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Chapter 3

RIGHTS AND OBLIGATIONS OF LAND USERS

Article 19. Use of plots of land for specific purposes

Land users shall have the right and obligation to use plots of land for the purposes for which they were granted to them.

Land users shall be obliged to make rational use of plots of land granted to them and not to commit on their plot of land any act that would infringe the interests of neighbouring land users.

The use of land to obtain unearned income shall be prohibited.

Article 20. Rights of land users

According to the specific purpose for which each plot of land is granted, land users shall have the right, in accordance with established procedures:

To erect buildings and installations for housing, production, cultural and social and other purposes;

To sow agricultural crops, and plant forests, orchards and decorative and other plantations;

To carry out irrigation, drainage, and other land improvement work, and to construct ponds and other reservoirs;

To use meadowland, pastures and other agricultural land;

To use, for the needs of the economy, common minerals, peat and bodies of water on the plot of land and also to exploit other useful properties of the land.

The rights of land users may be restricted by law in the interests of the State, and also in the interests of other land users.

Article 21. Protection of the rights of land users

The rights of land users shall be protected by law.

Violated rights of land users shall be reinstated in the manner provided for by the legislation of the USSR and the Byelorussian SSR.

Damages caused to land users shall be made good.

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Chapter 15

LAND USE BY THE FAMILY OF A COLLECTIVE FARM WORKER (COLLECTIVE FARM HOUSEHOLD)

Article 65. Right of the family of a collective farm worker (collective farm household) to a household plot of land

Every collective farm worker's family (collective farm household) shall have the right to a household plot of land, to be provided in the manner and within the limits laid down by the collective farm regulations.

When rural inhabited localities are heavily built up, a smaller household plot shall be granted near the dwelling (apartment) and the remainder of the plot shall be allocated outside the residential zone of the locality.

Article 66. Granting of household plots in the event of a division of a collective farm household

In the event of a division of the collective farm household, registered with the executive committee of the village Soviet of Working People's Deputies, the general meeting of the members of the collective farm or meeting of their authorized representatives shall grant the newly formed households plots from household landstock.

Article 67. Retention of the right of the collective farm household to a household plot of land

The right to the household plot granted shall be retained by collective farm households where the only member of the household capable of work has been called up for urgent active military service in the ranks of the armed forces of the USSR 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 as the result of an organized recruitment, or where the remaining members of the collective farm household consist only of minors.

The right to use a household plot shall also be retained by collective farm households where all the members are incapable of work on account of old age or disability.

In all other cases the question of retention of the household plot shall be decided by the general meeting of the collective farm members.

Single members of collective farms converted to State farms or other State agricultural undertakings who are elderly and incapable of work shall retain for life a household plot of the same size as the one which they used in the collective farm.

Article 68. Right of collective farm households to use pasturage

In accordance with the collective farm regulations, collective farm households shall be allocated pasturage for their livestock.

Chapter 16

LAND USE BY MANUAL AND NON-MANUAL WORKERS AND BY OTHER CITIZENS LIVING IN RURAL LOCALITIES

Article 69. Granting of household plots of land to manual and non-manual workers of State farms and other State agricultural undertakings, organizations and establishments, and to teachers, physicians and other specialists working and living in rural localities

State farms and other State agricultural undertakings, organizations and establishments shall grant household plots of land or vegetable gardens, from the land set aside for that purpose, to regular manual and non-manual workers and to teachers, physicians and other specialists working and living in rural localities. Household plots or vegetable gardens shall be granted by decision of the management of the State farm, undertaking, organization or establishment.

The collective farm shall, by decision of the general meeting of the members of the collective farm or meeting of their authorized representatives, grant household plots of land to teachers, physicians and other specialists working and living in rural localities.

Article 70. Granting of household plots of land to manual and non-manual workers, pensioners and disabled persons living in rural localities

Where unused household land is available on collective and State farms and in other State agricultural undertakings, organizations and establishments, household plots may be granted to manual and non-manual workers, pensioners and disabled persons living in rural localities, by decision of the general meeting of the members of the collective farm or meeting of their authorized representatives, or of the management of the State farm, undertaking, organization or establishment, confirmed by the executive committee of the village Soviet of Working People's Deputies.

Chapter 17

LAND USE BY INDIVIDUAL PEASANT FARMS

Article 80. Land use by individual peasant farms

The individual peasant farms existing in certain regions shall use the fields and household land granted to them for farming in the manner and within the limits laid down by the Council of Ministers of the Byelorussian SSR.

ACT OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 4 JUNE 1970

PUBLIC HEALTH

EXTRACTS

One of the paramount tasks of the Soviet State is to protect the health of the people.

The socialist social system ensures a steady rise in the material well-being and culture of the people and improvements in working conditions, everyday life and leisure. In the USSR, of which the Byelorussian SSR forms a part on the basis of a voluntary union and equal rights with the other Union Republics, there is a broad system of social, economic and medical measures, which help to raise the standard of public health protection. There is also free, qualified medical care; health-improvement and sanitary measures are being extended; mass physical culture and sport are developing in every way. Socialist society pays particular attention to protecting the health of mothers and children.

Continually developing medical science is an important basis of Soviet health protection. Medical research serves the goal of achieving health and a long active life.

The system of public health protection in the USSR, which is one of the greatest achievements of socialism, has made it possible to ensure a significant improvement in the state of health of the population, to reduce morbidity, to eradicate many communicable diseases that were earlier very common, to reduce sharply general and infant mortality, and to increase longevity significantly.

The function of Soviet health legislation is to seek actively, further improvements in public health protection, and to strengthen legality in this sphere of social relations.

Section I

General provisions

Article 1. Purposes of the health legislation of the Byelorussian SSR

The purposes of the health legislation of the Byelorussian SSR are the regulation of social relations in matters pertaining to the protection of the health of the population in order to ensure a harmonious development of citizens' physical and spiritual strength, their health, and a high level of fitness for work and long active life; the prevention and reduction of morbidity and further reduction in infirmities and lowering of mortality; and the removal of factors and conditions which have a harmful effect on the health of citizens.

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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. The powers of such agencies, undertakings, institutions and organizations in matters pertaining to the protection of the health of the population shall be defined by the legislation of the USSR and the Byelorussian SSR.

Trade unions, co-operative organizations, the Red Cross Society and other public organizations shall participate, in accordance with their rules (regulations), in ensuring the protection of the health of the population in the manner specified in the legislation of the USSR and the Byelorussian SSR.

Citizens of the Byelorussian SSR shall take care of their own health and the health of other members of society.

Article 4. Public participation in the work of health agencies and institutions

There shall be broad public participation in the work of health agencies and institutions to improve the protection of the health of the population. Social councils shall be set up at therapeutic and prophylactic establishments and other health institutions.

Article 5. Provision of medical care to citizens

In accordance with the fundamental principles of the health legislation of the USSR and the Union Republics, citizens of the USSR shall be entitled to free, professional medical care, provided by State health institutions and accessible to all.

Article 6. Principles of the organization of public health in the Byelorussian SSR

The protection of the health of the population of the Byelorussian SSR 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 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 clinics; 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, preventive clinics, 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.

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Section II

Practice of medical and pharmaceutical activities

Article 13. 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 specialized secondary 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 specialized secondary educational establishments of the USSR may engage in medical and pharmaceutical activities in the territory of the Byelorussian SSR 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 Byelorussian SSR 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.

Article 14. Responsibility for the illegal practice of medicine

Persons practising medicine without the necessary medical training shall be held criminally responsible under article 216 of the Criminal Code of the Byelorussian SSR.

Article 15. Physician's oath

Pursuant to the fundamental principles of the health legislation of the USSR and the Union Republics, citizens of the USSR who have graduated from institutes of higher medical education in the Byelorussian SSR and who have obtained the title of physician shall take the oath of physician of the Soviet Union.

The text of the oath and the procedures by which it is taken shall be established by the Presidium of the Supreme Soviet of the USSR.

Article 16. Professional obligations and rights of medical and pharmaceutical workers

The fundamental professional obligations and rights of medical and pharmaceutical workers shall be established by the legislation of the USSR and the Byelorussian SSR.

The professional obligations and rights of medical, pharmaceutical and other workers in health institutions dealing with specific specialized fields shall be determined by the Ministry of Health of the USSR.

The professional rights, honour and dignity of physicians and other medical workers shall be protected by law.

Medical, pharmaceutical and other public health workers who have distinguished themselves in discharging their professional obligations and have performed their lofty duty conscientiously and honestly shall be rewarded by the State in accordance with procedures to be established by legislation.

Article 17. Privileges to be extended to medical and pharmaceutical workers

Physicians, pharmacists and intermediate medical and pharmaceutical workers living and working in rural localities and workers' settlements shall be provided with apartments, heating and lighting free of charge, according to the procedure established by the legislation of the Byelorussian SSR.

Other privileges to be extended to medical and pharmaceutical workers shall be established by the legislation of the USSR and the Byelorussian SSR.

Article 18. Improvement of the professional knowledge of medical and pharmaceutical workers

It shall be the duty of health agencies to evolve and implement measures for the specialization and improvement of the professional knowledge of medical and pharmaceutical workers by means of periodic training at institutes providing refresher courses and other appropriate health institutions.

The directors of health agencies and institutions shall provide the necessary conditions for medical and pharmaceutical workers to work systematically at improving their qualifications.

The procedure for the certification of medical and pharmaceutical workers shall be established jointly by the Ministry of Health of the USSR and the Central Committee for the medical workers' trade union.

Article 19. 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 20. Responsibility of medical and pharmaceutical workers for violations of professional obligations

Medical and pharmaceutical workers who have violated their professional obligations shall be liable to disciplinary action as set out in the law, unless the violation makes them incur criminal responsibility under the law.

Section III

Provision of sanitary and epidemiological service to the population

Article 21. Sanitary and epidemiological service to the population

The population of the Byelorussian SSR shall be provided with sanitary and epidemiological service by the implementation of comprehensive, hygienic and epidemiological measures and the system of State public health inspection.

It shall be the obligation of all State agencies, undertakings, institutions and organizations, collective farms, trade unions and other public organizations to take hygienic and epidemiological measures aimed at eliminating and preventing environmental pollution, making the conditions of people's work, everday life and leisure more healthy and preventing disease.

Violation of hygienic and epidemiological regulations and norms shall render the offender liable to disciplinary, administrative or criminal proceedings in accordance with the legislation of the USSR and the Byelorussian SSR.

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Section IV

Therapeutic and prophylactic care for the population

Article 40. Provision of therapeutic and prophylactic care to Soviet citizens

In accordance with the fundamental principles of the health legislation of the USSR and the Union Republics, citizens of the USSR shall be provided with specialized medical care in polyclinics, hospitals, special clinics and other therapeutic and prophylactic establishments, also with emergency and domiciliary 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 additional 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.

In order to prevent disease, therapeutic and prophylactic establishments shall make wide use of prophylactic examinations of the population and clinical observation.

Undertakings, institutions and organizations shall, in conjunction with health institutions and trade union organizations, take necessary measures to prevent industrial injury and occupational diseases and to restore work capability.

Article 41. Provision of therapeutic and prophylactic care to aliens and stateless persons

Aliens and stateless persons permanently domiciled in the USSR shall be entitled to medical care in the Byelorussian SSR on an equal footing with Soviet citizens.

Aliens and stateless persons temporarily domiciled in the USSR and present in the territory of the Byelorussian SSR shall receive medical care in the manner to be established by the Ministry of Health of the USSR.

Article 42. Procedure 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 43. Obligation of medical and pharmaceutical workers to give immediate first aid to citizens and responsibility for failure to provide such aid

Medical and pharmaceutical workers shall be obliged to give first aid to citizens who are travelling, on the street, in other public places and at home.

Medical or pharmaceutical workers who fail to provide such aid to a sick person without valid reason shall be held criminally responsible under article 126 of the Criminal Code of the Byelorussian SSR.

Article 44. Procedure for referring patients to appropriate therapeutic and prophylactic establishments in the Byelorussian SSR or other Union Republics

Patients may, when necessary, be referred to appropriate therapeutic and prophylactic establishments in the Byelorussian SSR in accordance with the procedure to be established by the Ministry of

Health of the Byelorussian SSR, or to therapeutic and prophylactic establishments in the other Union Republics in accordance with the procedure to be established by the Ministry of Health of the USSR.

Article 45. Recruitment of physicians to serve on commissions for the medical examination of citizens

When necessary, physicians may be recruited by the appropriate health agencies to serve on commissions for the medical examination of citizens.

Article 46. Use of methods of diagnosis and treatment, and medicines

In medical practice, physicians shall use the methods of diagnosis, prophylaxis and treatment, and the medicines authorized by the Ministry of Health of the USSR.

In the interests of achieving a cure, the physician may, with the patient's consent or, if the patient is under 16 years of age or is mentally ill, with the consent of the patient's parents, guardian or curator, use new methods of diagnosis, prophylaxis and treatment, and medicines, which are scientifically sound but not yet authorized for general use. The procedure for the use of such methods of diagnosis, prophylaxis and treatment and medicines, shall be established by the Ministry of Health of the USSR.

Article 47. 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 16 years of age or is mentally ill, to the consent of the patient's parents, guardian or curator.

Emergency surgical operations shall be carried out and complex methods of diagnosis employed without the consent of the patients or of their parents, guardians or curators 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 48. 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.

The cases in which persons suffering from the above-mentioned diseases may be compulsorily treated and compulsorily hospitalized and the relevant procedures shall be established by the legislation of the USSR and the Byelorussian SSR.

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Article 53. Assistance to medical workers in providing therapeutic and prophylactic care to citizens

In order that health institutions may be organized for undertakings, institutions and organizations, the management shall set aside the necessary premises and transport, and shall assist physicians and other medical workers in fulfilling their professional obligations.

The executive committees of the local Soviets of Working People's Deputies, directors of undertakings, institutions and organizations, and other officials shall be obliged to assist medical workers in giving immediate medical care to citizens by providing transport and communication facilities and any other assistance necessary.

Article 54. Transportation of manual and non-manual workers who fall ill at their place of work

The transportation to therapeutic establishments of manual and non-manual workers who fall ill at their place of work shall be effected, when necessary, using the facilities and at the expense of the undertaking, institution or organization where the manual or non-manual worker who has fallen ill works.

Article 55. Provision of transport facilities to collective farm members for the conveyance of sick persons to therapeutic establishments

When necessary, the collective farm shall provide collective farm members with transport facilities, free of charge and without delay, for the conveyance of sick persons to therapeutic establishments.

Article 56. Right of medical workers to use any form of transport

In cases where the life of a sick person is threatened, a physician or any other medical worker may use without charge any form of transport available at the time in order to travel to the place where the sick person is located or to transport him to the nearest therapeutic and prophylactic establishment.

Responsibility for failure to provide transport for these purposes shall be established by the legislation of the Byelorussian SSR.

Section V

Protection of motherhood and childhood

Article 57. Encouragement of motherhood. Guarantees for the health protection of the mother and her child

In the Byelorussian SSR, motherhood shall be protected and encouraged by the State.

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 Byelorussian SSR.

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 58. 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 59. Provision of medical care for children and adolescents

Medical care for children and adolescents shall be provided by therapeutic and prophylactic and health improvement establishments and by children's polyclinics, specialized clinics, hospitals, sanatoria and other health institutions. Children shall be given free passes to children's sanatoria.

Children and adolescents shall be cared for by the system of referral to clinics.

Article 60. Measures to improve and protect the health of children and adolescents

In order to bring up a healthy young generation with a harmonious development of physical and spiritual strength, State agencies, undertakings, institutions and organizations, collective farms, trade unions and other public organizations shall ensure the development of a wide network of crèches and kindergartens, schools, boarding schools, forest schools, pioneer camps and other children's establishments.

Children being brought up in children's establishments and studying in schools shall be provided with the necessary conditions for the protection and strengthening of health and a hygienic upbringing. The study workload, and a model study régime for children shall be established in agreement with the Ministry of Health of the USSR.

Supervision over the protection of children's health and the implementation of health improvement measures in children's establishments and schools shall be exercised by health agencies and institutions in conjunction with education agencies and institutions and with the participation of the public organizations.

Article 61. 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.

Article 62. Supervision of labour and in-service training and working conditions of adolescents

In-service training of adolescents shall be permitted in occupations suitable to their age, physical and mental development and state of health. Labour and in-service training shall be effected under systematic medical supervision.

Supervision of the observance of the working conditions for adolescents established by the legislation of the USSR and the Byelorussian SSR and of the adoption of special measures to prevent illness among adolescents shall be exercised by

health agencies and institutions in conjunction with the vocational training agencies, public education agencies, trade unions, Young Communist and other public organizations.

Article 63. Compulsory medical examination of adolescents

In order that systematic supervision may be exercised over the state of health and physical development of adolescents, they may be accepted for work only after a preliminary medical examination. Subsequently, adolescents shall undergo a compulsory medical examination at least once a year until they reach the age of 18.

Section VI

Treatment at sanatoria and spas, organization of leisure, tourism and physical culture

Article 64. Treatment of citizens at sanatoria and spas

Indications and counter-indications for in-patient and out-patient treatment at the spas and sanatoria of the Byelorussian SSR shall be established by the Ministry of Health of the USSR.

In accordance with established procedures, patients shall be sent to sanatoria and spa establishments free of charge, at reduced rates or at full rates.

...

Article 68. Use of rest homes, convalescent homes, tourist centres and other leisure establishments

In accordance with established procedures, citizens shall use rest homes, convalescent homes, tourist centres and other leisure establishments free of charge, at reduced rates or at full rates.

Article 69. Organization of physical culture, sports and tourism

State agencies, trade unions, Young Communist and co-operative organizations, sports associations, undertakings, institutions and organizations shall encourage activities relating to physical culture, health improvement, sports, tourism and excursions among the population, the creation and strengthening of physical culture groups, tourist clubs and organizations, and the introduction of gymnastics at places of work.

Provisions shall be made for physical education in the work plans of children's pre-school and out-of-school establishments, and in the curricula of general education schools, vocational and technical colleges and schools and specialized secondary and higher educational establishments.

In order that they may engage in physical culture and sports, citizens shall, in accordance with established procedures, be provided with sports facilities and sports and tourist equipment.

Medical supervision over the state of health of citizens engaging in physical culture and sports shall be exercised by health institutions.

...

Section VIII

Medicines and prosthetic appliances

Article 72. Procedure for providing citizens with medicines

Citizens shall be provided with medicines by State pharmacies and dispensaries and by therapeutic and prophylactic establishments.

The procedure for providing citizens with medicines free of charge or at reduced rates during out-patient or polyclinic treatment shall be established by the legislation of the USSR.

Pharmacies and dispensaries may dispense only such medicines as are authorized for use by the Ministry of Health of the USSR.

Article 73. Exercise of supervision over the production of medicines

The production of new medicines shall be allowed with the authorization of the Ministry of Health of the USSR after their therapeutic or prophylactic effectiveness has been established.

The quality of medicines shall conform to the requirements of the State pharmacopoeia of the USSR or to technical specifications approved in accordance with established procedures.

Quality control of medicines shall be carried out by the Ministry of Health of the USSR. Quality control of medicines prepared by the pharmacies and dispensaries of the Byelorussian SSR shall be carried out also by the Ministry of Health of the Byelorussian SSR.

Article 74. Provision of prosthetic appliances to citizens

When necessary, citizens shall be provided with prosthetic appliances, orthopaedic and corrective devices, hearing aids, equipment for physical therapy and special means of conveyance.

The categories of persons entitled to be provided with the above-mentioned appliances and objects free of charge or at reduced rates, and also the conditions and manner in which they are supplied, shall be established by the legislation of the USSR and the Byelorussian SSR.

Section IX

International treaties and agreements

Article 75. International treaties and agreements

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 health legislation of the Byelorussian SSR, the rules in the international treaty or international agreement shall apply in the territory of the Byelorussian SSR.

RESOLUTION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA AND OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR OF 5 OCTOBER 1970

LOCATION AND DEVELOPMENT OF LEISURE AREAS, AND OF THE NETWORK OF SANATORIUM AND SPA TREATMENT AND TOURISM IN THE BYELORUSSIAN SSR

EXTRACTS

Attaching great importance to the organization of the leisure of the working people, and in order to make the most rational use of spa land, therapeutic facilities and spa centres, to eliminate building deficiencies in spas and leisure areas and to improve further the construction of sanatoria and spas, the Central Committee of the Communist Party of Byelorussia and the Council of Ministers of the Byelorussian SSR resolve that:

...

5. The construction of new and expansion of existing industrial undertakings and other installations not directly serving the needs of the public and the vacationers or the needs of sanatorium and spa construction and civilian housing construction shall as a rule be prohibited in areas set aside for leisure, sanatorium and spa treatment, and tourism.

The construction of installations which have a harmful effect on the natural environment in leisure areas, with the exception of specific installations specially authorized by the Council of Ministers of the Byelorussian SSR, shall be prohibited.

6. Establishments for sanatorium and spa treatment, leisure and tourism shall in general be designed and constructed in the form of large complexes which are economical to build and run, making use of the most advanced Soviet and foreign experience, achieving a high standard of architecture, quality of construction, equipment and amenities, and using modern building and finishing materials.

7. Ministries and departments shall be recommended, in agreement with the Republican committees of the appropriate trade unions, to combine the resources earmarked by industrial undertakings, collective farms and organizations from the social-cultural and housing fund, from enterprise funds and from other non-centralized sources, and to transfer those resources to the Byelorussian Trade Union Council to finance the building of establishments for leisure, sanatorium and spa treatment, and tourism in order to obtain subsequently workers' holiday passes from the Byelorussian Trade Union Council under the terms of an agreement.

The construction of preventive centres and leisure centres out of investments earmarked for that purpose in accordance with established procedures, may be carried out by undertakings and organizations in local areas set aside for leisure by the executive committees of the regional Soviets of Working People's Deputies. Such preventive centres and leisure centres shall remain on the balance sheet of the undertakings and organizations that built them.

8. The Byelorussian Trade Union Council and the Ministry of Health of the Byelorussian SSR shall draft in 1970 and submit to the Council of Ministers of the Byelorussian SSR measures to improve sanitary and hygienic conditions in spas and leisure areas in operation and under construction, and in places to be reserved for the construction of spas, with the aim of putting these measures into effect in the near future and attracting resources which may be used for the above-mentioned purposes in accordance with established procedures by the Ministries and departments concerned.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR OF 22 OCTOBER 1970

INCREASED CRIMINAL RESPONSIBILITY FOR WATER AND AIR POLLUTION

In order to increase criminal responsibility for water and air pollution, the Presidium of the Supreme Soviet of the Byelorussian SSR hereby resolves:

Article 218 of the Criminal Code of the Byelorussian SSR shall be revised to read as follows:

Article 218. Water and air pollution

The pollution of rivers, lakes and other bodies of water and water sources with untreated sewage, refuse or wastes from industrial, agricultural, communal and other enterprises, institutions and organizations which has caused or may cause harm to human health, to agricultural production or to stocks of fish and the pollution of the air by industrial wastes harmful to human health, shall be punishable by corrective labour for a term not exceeding one year or by a fine not exceeding 300 roubles.

The same offences shall, if they have caused substantial harm to human health or to agricultural production or have led to the death of large numbers of fish, be punishable by deprivation of liberty for a term not exceeding five years.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR OF 26 AUGUST 1970: ADDITION OF ARTICLE 122^1 TO THE CRIMINAL CODE OF THE BYELORUSSIAN SSR

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

To establish criminal responsibility for violation of the secrecy of adoption against the wishes of the adopter.

To add the following article 122^1 to the Criminal Code of the Byelorussian SSR:

Article 122^1. Violation of the secrecy of adoption

Violation of the secrecy of adoption against the wishes of the adopter shall be punishable by corrective labour for a term not exceeding one year, by a fine not exceeding 50 roubles or by public reprimand.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR OF 29 DECEMBER 1969

RATIFICATION OF CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANISATION

The following Conventions of the International Labour Organisation approved by the Council of Ministers of the Byelorussian SSR and submitted for ratification:

No. 27 – concerning the Marking of the Weight on Heavy Packages Transported by Vessels;

No. 32 – concerning the Protection against Accidents of Workers Employed in Loading or Unloading Ships (revised 1932);

No. 116 – concerning the Partial Revision of the Conventions Adopted by the General Conference of the International Labour Organisation at its First Thirty-Two Sessions for the Purpose of Standardizing the Provisions regarding the Preparation of Reports by the Governing Body of the International Labour Office on the Working of Conventions;

No. 119 – concerning the Guarding of Machinery;

No. 123 – concerning the Minimum Age for Admission to Employment Underground in Mines;

No. 124 – concerning Medical Examinations of Young Persons for Fitness for Employment Underground in Mines –

shall be ratified.

CAMEROON

DECREE No. 70-DF-44 OF 14 FEBRUARY 1970*

1. The following International Labour Conventions are hereby ratified:

Convention number

3 on Maternity Protection, 1919;
5 on Minimum Age (Industry), 1919;
9 on the Placing of Seamen, 1920;
10 on the Minimum Age (Agriculture), 1921;
13 on White Lead (Painting), 1921;
14 on the Weekly Rest (Industry), 1921;
15 on the Minimum Age (Trimmers and Stokers), 1921;
16 on the Medical Examination of Young persons (Sea), 1921;
52 on Holidays with pay, 1936;
77 on the Medical Examination of Young persons (Industry), 1946;
78 on the Medical Examination of Young persons (Non industrial occupations), 1946;
81 on Labour Inspection, 1947;
89 on Night Work (Women), Industry, 1948;
90 on Night Work of Young persons (Industry) revised, 1948;
99 on the Minimum Wage fixing Machinery (Agriculture), 1951;
100 on Equal Remuneration, 1951;
101 on Holiday with pay (Agriculture), 1952;
105 on the Abolition of Forced Labour, 1957;
122 on the Policy of Employment, 1964;
123 on the Minimum Age (Underground Work), 1965.

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* *Official Gazette of the Federal Republic of Cameroon*, No. 5, of 15 March 1970.

CANADA

NOTE[1]

Introduction

The year 1970 was characterized by an intensification of citizen participation activities in many aspects of Canadian life. This activity was reflected in the human rights field. Both Federal and Provincial Governments enacted legislation which has a direct bearing on the fundamental human freedoms. In addition, there were a number of important judicial decisions of significance in the field of human rights.

This report follows the format suggested in Economic and Social Council resolution 683 D (XXVI). It is divided into two sections. Section I is comprised of such explanatory comments as are necessary to describe trends during the year under review. Section II is comprised of copies of all legislation, amendments, general governmental decrees and reports on important judicial decisions referred to in Section I.

(A) Federal Legislation

1. *Criminal Code*

In 1970 the Criminal Code was amended[2] making it an indictable offence punishable by imprisonment for five years for an individual to advocate or promote genocide against any identifiable group. This legislation aimed at preventing and curbing the wilful promotion of hatred and genocide is for the protection of both majority and minority groups who can be distinguished by colour, race, religion or ethnic origin. There are certain defences open to a person charged under this section, namely:

(a) If he establishes that the statements communicated were true;

(b) If, in good faith, he expressed or attempted to establish by argument an opinion upon a religious subject;

(c) If the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) If, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred towards an identifiable group in Canada.

2. *Pardon for rehabilitated criminals*

During the year under review the Criminal Records Act[3] was enacted providing for the granting of pardons for criminal offences after the lapse of two or five years from the completion of punishment depending on the nature or seriousness of the crime. The pardon is granted when it is established that an applicant is of good behaviour and that the conviction in respect of which the pardon is granted should no longer reflect adversely on his character. A pardon granted under this act removes any disabilities attendant on the conviction, and it precludes any employer under federal jurisdiction from asking, in an employment application form, for disclosure of the offence.

3. *Public Order Act*

The *Public Order Act* was designed to replace the regulations made pursuant to the *War Measures Act*[4] which was invoked following the October crisis in Quebec. While not directed at any geographic area in Canada the provisions of the Act were restricted to controlling the activities of the Front de libération du Québec (FLQ) or any successor organization that advocated the use of force or the commission of crime to bring about governmental change within Canada with respect to the Province of Quebec or its relationship to Canada. The legislation was temporary in nature and expired on 30 April 1971.

The act followed the general scheme of the Public Order Regulations, 1970, made pursuant to the War Measures Act, with the FLQ remaining an unlawful association with membership in or support for it continuing to be illegal. However, the Public Order Act clarified the fact that there was no intention to infringe upon the right of

[1] Note furnished by the Government of Canada.

[2] *Statutes of Canada, 1970* (1st Supp.) c. 11.

[3] *Statutes of Canada, 1970* (1st Supp.) c. 12.

[4] SOR/70-443 and SOR, 1970 (1st Supp.) c. 104.

political dissent, the Act being directed solely at the violent means by which the FLQ hoped to achieve its purpose.

With certain specific exceptions, all the safeguards contained in section 2 of the *Canadian Bill of Rights* were retained, including the right to retain and instruct counsel without delay. The two exceptions related to certain restrictions on the right to bail and to detention without a charge being laid for a maximum of three days or with direction from the Attorney-General of the province, seven days.

4. *Law reform*

A Law Reform Commission has been established by Act of Parliament whose objects are to study and keep under review on a continuing and systematic basis the statutes and other laws of Canada with a view to making recommendations for their improvement, modernization and reform. The objects also include the removal of anachronisms and anomalies in the law and the elimination of obsolete laws.

5. *Minimum wages*

The Canadian Labour Code was amended[5] increasing the minimum wage to $1.65 for employees age 17 and over.

6. *Social security*

In December 1970, Parliament passed new legislation, an amendment to the Old Age Security Act, setting the basic old age pension at $80.00 per month effective 1 January 1971 and increasing the Guaranteed Income Supplement payable to old age security pensioners who have little or no other income. Effective 1 April 1971 the maximum supplement was raised to $55.00 a month for a single pensioner or for a couple where only one spouse is a pensioner and to $95.00 where both husband and wife are pensioners, thus guaranteeing a monthly income of $135.00 to a single pensioner and $255.00 to a couple where both husband and wife are pensioners. For persons eligible to receive the supplement both it and the Old Age Security pension will be increased annually after 1971 from 1 per cent to a maximum of 2 per cent in accordance with changes in the Pension Index.

7. *Poverty*

Expenditures under the Manpower Occupational Training for Adults programme in 1970 continued to be, differentially, greater in geographic regions with the highest need demonstrated by the incidence of poverty and unemployment. A survey of 1970 trainees three to four months after graduation showed that even in areas of high unemployment, between seventy and ninety percent of the survey respondents had found jobs. The higher percentage relates to skill training as compared to general upgrading courses. An independent evaluation of manpower programmes carried out in a depressed area designated for economic expansion activities reflected extremely significant benefit cost ratios particularly so in terms of productivity in the agricultural sector.

A significant number of trainees employed had found jobs in the occupations in which they were trained or in related occupations.

8. *International Relations*

The Government of Canada continues to pursue its programme aimed at achieving Canadian adherence to a number of United Nations Instruments in the field of human rights. On 14 October 1970, Canada deposited with the Secretary-General its instrument of ratification of the International Convention on the Elimination of all Forms of Racial Discrimination. This Convention which Canada had signed on 24 October 1966, is regarded as one of the pioneering instruments on human rights.

In the field of Humanitarian Law, Canada played a leading role at the ICRC Conference of Governmental experts in Geneva in May and June of 1970 and introduced a draft protocol to the four 1949 Geneva Red Cross Conventions which would have the effect of establishing minimum standards of international conduct in cases of internal armed conflict. This draft document is at present receiving careful study by the governments of States parties to the Geneva Conventions and will be used as a basic working document at the 1972 ICRC Humanitarian Law Meeting.

(B) Provincial Legislation

1. *Anti-discrimination measures*

(a) The Manitoba Human Rights Act[6] was introduced in 1970 prohibiting discrimination on the basis of race, colour, creed, religion, nationality, ancestry or place of origin. Discrimination is forbidden in the following areas: public places, apartment buildings, employment practices (trade union membership, applications and advertisements), discriminatory publications and in contracts offered to the public. Also contained in the Act is a provision whereby it is forbidden to discriminate against anyone for taking part in proceedings under the Act. Non-profit religious, philanthropic, educational, fraternal and social organizations are exempted from the employment provisions of the Act.

[5] *Statutes of Canada, 1970* (1st Supp.) c. 22.

[6] *Statutes of Manitoba, 1970,* c. 104.

(b) Ontario introduced the Women's Equality Opportunity Act[7] prohibiting discrimination in employment on the basis of sex and marital status. Significant areas covered in the legislation are: employment advertising, advancement, classifications and prohibition of discrimination on the basis of sex by employment agencies. Also included in the legislation are provisions for pregnancy leave for female employees.

This Act is being administered by the Ontario Women's Bureau (a division of the Ontario Department of Labour) which is authorized to accept and process complaints of discrimination under the Act.

(c) The Nova Scotia Human Rights Act was amended[8] to give more specificity to the exemptions given to private, non-profit religious and ethnic organizations operating for the sake of the welfare of their members.

2. *Employment standards*

(a) The Employment Standards Act of New Brunswick was amended[9] invalidating the assignment of wages as a security for debt.

(b) Ontario amended the Employment Standards Act[10] invalidating any agreement between employer and employee for the retention of wages by the employer, removing garnishment as a reason for dismissal of an employee, guaranteeing continuity of employment in the case of change of ownership of the establishment, and guaranteeing payment of wages and granting of annual vacations. It also contains provisions whereby both employers and employees are required to give notice of termination.

(c) Manitoba amended its Employment Standards Act[11] providing for granting of general holidays, and the payment of wages on these days.

3. *Industrial safety*

In Ontario a section of the Industrial Safety Act was repealed[12] substituting instead a provision whereby school-aged children cannot be employed during school hours.

4. *Workmen's Compensation*

(a) The Workmen's Compensation Act of Nova Scotia was amended[13] increasing allowances to dependent widows and children, and providing allowances for prosthetic devices and additional clothing.

(b) The Workmen's Compensation Act of Manitoba was amended[14] providing for compensation for permanent partial disability and for special compensation where the loss of earning capacity is greater than the physical loss on which the compensation was allowed.

5. *Age of Majority*

Both Saskatchewan[15] and British Columbia[16] reduced the age of majority from age 21 to age 19 granting to individuals at age 19 the same rights and privileges accorded to individuals 21 or over.

6. *Child welfare*

A number of changes occurred in child welfare legislation governing the protection of children, children of unmarried parents, and adoption, in Nova Scotia, New Brunswick, Alberta, Prince Edward Island, British Columbia, Ontario and in the Yukon Territory. The Child Welfare Act of Ontario,[17] for example, was amended expanding the conditions under which Children's Aid Societies can assist unmarried parents and their children.

7. *Social security*

(a) In 1970, all Canadian provinces modified some aspects of their social security programmes. The modifications related to increases in the rates of assistance, appeal procedures, eligibility requirements and coverage, and placed an emphasis on the preventative approach. Quebec, with the adoption of a new Social Security Act,[18] integrated a number of assistance measures under a comprehensive new programme. The programme covers three main categories of people: individuals and families who lack means of subsistence, persons who require special aid to meet a threatening situation, and persons who need aid in the form of a loan or the guarantee of a loan pending the receipt of anticipated resources of the conversion of assets or similar circumstances. Major changes in eligibility requirements and coverage, designed to permit broader access to such services, were implemented in Manitoba, Ontario, and Alberta. The latter adopted a new Social Development Act.[19]

(b) Rates of assistance were increased for certain circumstances in British Columbia, Saskatchewan, Alberta, Ontario, Nova Scotia, Prince Edward Island and Manitoba. Appeal procedures were extended and made more flexible in Quebec, Newfoundland, Nova Scotia and New Brunswick.

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[7] *Statutes of Ontario, 1970*, c. 33.

[8] *Statutes of Nova Scotia, 1970*, c. 85.

[9] *Statutes of New Brunswick, 1970*, c. 31.

[10] *Statutes of Ontario, 1970*, c. 45.

[11] *Statutes of Manitoba, 1970*, c. 48.

[12] *Statutes of Ontario, 1970*, c. 28.

[13] *Statutes of Nova Scotia, 1970*, c. 79.

[14] *Statutes of Manitoba, 1970*, c. 47.

[15] *Statutes of Saskatchewan, 1970*, c. 8.

[16] *Statutes of British Columbia, 1970*, c. 2.

[17] *Statutes of Ontario, 1970*, c. 96.

[18] *Statutes of Quebec, 1970*, c. 42.

[19] *Statutes of Alberta, 1970*, c. 104.

(c) Programmes in Quebec, Ontario and British Columbia were modified to encourage participation in, and retraining for, the labour force.

(C) Reports

1. The Royal Commission on the Status of Women in Canada published its report in 1970.[20] This report contains recommendations aimed at encouraging and assisting greater participation and utilization of women in the Canadian society. A Minister has been given the responsibility of acting on the report.

(D) Judicial Decisions

1. In the case of *Gana* v. *Minister of Manpower and Immigration*,[21] an alien visitor appealed to the Supreme Court of Canada against an Order of Deportation issued under the Immigration Act. The order was issued on the grounds that the appellant did not meet the required standard for admissibility under the Immigration Regulations based on an assessment of qualifications by an immigration officer. The Supreme Court ruled that in the review process under the Immigration Act, both Special Inquiry Officers (who rule on the issuance of deportation orders) and the Immigration Appeal Board (to whom deportation orders are appealed) have the right and the statutory duty to re-evaluate the qualifications of appellants under the objective criteria dealing with admissibility contained in the Immigration Regulations. This decision introduced the element of discretion to be exercised in the review process in cases where deportation is based on decisions involving an assessment of admissibility. The Special Inquiry Officer and the Immigration Appeal Board must re-evaluate the qualifications of appellants under the norms of admissibility contained in the Immigration Regulations.

2. In the case of *Regina* v. *Beaulne, Ex parte Lautrailla*,[22] a woman accused of vagrancy by being a common prostitute made application for a writ of prohibition to prevent the Provincial Court Judge from proceeding to hear the charge on the ground that the relevant section of the Criminal Code under which the accused was charged should be declared inoperative as it is contrary to the Canadian Bill of Rights because it discriminates against women. The Ontario High Court dismissed the prohibition application, on the ground that the Criminal Code does not discriminate against females; the relevant section applies only to prostitutes or night walkers found in public places and unable to account for themselves; the aim of the legislation being the prevention of soliciting by prostitutes in public places.

3. Similarly in the case of *Regina* v. *Lavoie*,[23] a woman who had been convicted of vagrancy by being a common prostitute appealed the conviction on the ground that the legislation is discriminatory to women, and should be declared inoperative by virtue of the Canadian Bill of Rights. The County Court of Vancouver dismissed the appeal pointing out that the relevant section of the Criminal Code does not conflict with the Canadian Bill of Rights as it does not create an offence against females, but only against a particular female who being a common prostitute or night walker is found in a public place and is unable, when required, to give a good account of herself.

4. In *Regina* v. *Ittoshat*,[24] a man accused of vagrancy was brought to trial a thousand miles away from his home where the offence was alleged to have been committed. The Montreal Court of Sessions of Peace, Quebec stayed the proceedings on the ground that it is harsh and unfair treatment and tantamount to the denial of justice to bring the accused to go through a trial in a completely different and unfamiliar environment necessitating the bringing of counsel from his own community or obtaining the benefit of counsel in an area where he does not know anybody and necessitating the transportation of witnesses from the place of the offence to the place of trial effectively denies the accused the right to make full answer and defence.

5. The most historic judicial decision concerning the fundamental human freedoms was handed down by the Supreme Court of Canada in November, 1969[25] when it ruled in the case of *Regina* v. *Drybones* that the liquor section of the Indian Act was inoperative by reason of the provisions of the Canadian Bill of Rights. This section of the Indian Act which made the Indian liable to harsher penalties than other Canadians for being drunk did not guarantee the Indian equality before the law.

The case involved an appeal by an Indian against a conviction of drunkeness. He had been convicted because under the Indian Act, an Indian commits an offence if he is found drunk off the reserve; while under the Liquor Ordinance of the Territorial Government, an individual can only be convicted of an offence if intoxicated in a public place. Furthermore, the penalties are more lenient under the territorial Liquor Ordinance. In the Drybones case, the Indian was convicted under the Indian Act for being drunk off the reserve and fined; he appealed the conviction to the North West Territories Court of Appeal which dismissed the charge. The Crown then appealed to the Supreme Court of Canada. This Appeal was dismissed by the Supreme Court; thereby upholding the decision of the Territorial Court of Appeal.

This decision is significant; for the first time in Canada, the Supreme Court assumed a legislative role, and it was for the protection of human rights.

[20] *Report of the Royal Commission on the Status of Women in Canada*, Ottawa: *Information Canada, 1970.*

[21] (1970) 13 *Dominion Law Reports* (3d) p. 699.

[22] (1971) 16 *Dominion Law Reports* (3d) p. 657.

[23] (1971) 16 *Dominion Law Reports* (3d) p. 647.

[24] (1970) 13 *Dominion Law Reports* (3d) p. 266.

[25] (1970) 9 *Dominion Law Reports* (3d), p. 473.

CENTRAL AFRICAN REPUBLIC

ORDINANCE No. 70-64 OF 30 SEPTEMBER 1970 TO ESTABLISH A SICKNESS INSURANCE SCHEME IN THE CENTRAL AFRICAN REPUBLIC

*Summary**

Section 1 of the Ordinance establishes a sickness insurance scheme for civil servants, government employees, wage and salary earners of the private sector, former workers in receipt of old-age or disability pensions, pupils and students, self-employed workers, members of co-operatives, and members of the National Pioneer Youth. The scheme as indicated in this section, also applies to the families of the persons listed.

As stated in section 2, the object of the scheme is to provide an alternative income to compensate for the loss of remuneration incurred by the insured person while away from work as a result of an illness or accident other than an employment injury, and to enable the insured person to pay the medical and related expenses incurred as a consequence of his illness or that of members of his family.

Section 3 provides that membership in the sickness insurance scheme shall be compulsory for all persons covered by section 1, except for self-employed workers for whom affiliation is optional.

Other provisions of the Ordinance deal with the various types of benefit which shall be fixed by decree of the Council of Ministers; the Central African Social Security Office which shall be responsible for the management of the sickness insurance scheme; the management and administration of the scheme which shall fall within the competence of a managing committee and an executive director respectively; and the managing committee which shall consist of fourteen members.

* Summary based on English text of the Ordinance, published by the International Labour Office in *Legislative Series* 1970 – C.A.R. 1.

CHAD

DECREE No. 13 PR.-SGG. OF 29 JUNE 1970, RATIFYING THE CONVENTION ESTABLISHING THE ADVANCED INTERNATIONAL SCHOOL OF JOURNALISM OF YAOUNDE*

Art. 1. The Convention establishing the Advanced International School of Journalism of Yaoundé (AISJY), signed at Yaoundé on 17 April 1970, a copy of which is annexed to this decree, is hereby ratified.

* *Journal officiel de la République du Tchad*, No. 13, of 1 July 1970.

CONVENTION ESTABLISHING THE ADVANCED INTERNATIONAL SCHOOL OF JOURNALISM OF YAOUNDE

Preamble

The President of the Republic of Burundi,

The President of the Federal Republic of Cameroon,

The President of the Central African Republic,

The President of the People's Republic of the Congo,

The President of the Republic of Gabon,

The President of the Rwandese Republic,

The President of the Republic of Chad,

Conscious of the all-important role played by information in the economic, social and cultural development of their young States,

Anxious to put an end to the existing shortage of trained personnel in the news organs of the countries concerned,

Convinced that the teaching of journalism in Africa must combine intensive professional training and sufficient general culture with a realization of the responsibilities of the profession,

Considering that the education given African journalists abroad, however wide-ranging it may be and whatever its quality, has proved inadequate in so far as the appreciation of specifically African problems is concerned,

Bearing in mind the desire expressed by the countries concerned to standardize their training policy for journalists with a view to their classification in the national civil services,

Considering that a School shared by all the States of Central Africa is less expensive and more profitable,

Taking into account the results of the meeting held in Paris from 22 to 25 September 1969 between the representatives of their States,

Have decided to establish in the Federal University of Cameroon an Advanced International School of Journalism at Yaoundé (AISJY).

TITLE I

Purpose of the School

Art. 1. The High Contracting Parties hereby establish an Advanced International School of Journalism at Yaoundé.

The purpose of the School shall be to provide a progressive, integrated and practical education harmoniously combining general culture and professional training. The teaching shall be based on modern teaching methods.

TITLE II

Institutional provisions

Art. 2. The AISJY shall be a public institution of higher education with the legal status and financial autonomy to which legal entities are

entitled under the national legislation of the country where it has its headquarters.

The School shall be administered by a Board of Directors, assisted by a Pedagogical Committee; it shall be headed by a Director.

Art. 5. The Board of Directors shall lay down the internal regulations relating to the School's students, within the limits set by the general regulations of the University.

The Board of Directors shall draw up the budget estimates for the School; it shall determine the amount of each State's contribution in accordance with the provisions of the Protocol of agreement on financial matters.

The Board of Directors shall be consulted or may express wishes on the following matters:

The subjects to be taught, the system and the organization of studies and the syllabus;

Problems relating to research;

Any questions submitted to it by the Vice-Chancellor, the Director of the School or one of the Board's own members, or by the States signatories to the Convention establishing the School.

The Board of Directors may express wishes on any matter relating to the life and interests of the School or the University.

...

TITLE III

Pedagogy

Art. 10. Entrance to the AISJY shall be by competitive examination. Candidates must be in possession of the secondary school-leaving certificate *(baccalauréat)* in classics or an equivalent diploma, or have such professional qualifications as are stipulated in the School's Statutes.

Art. 11. The course shall cover three years, at the end of which an advanced diploma in journalism shall be awarded by the AISJY. This diploma shall be equivalent to a bachelor's degree.

TITLE IV

Financial provisions

Art. 12. The School's income and expenditure shall be recorded in a budget which shall be approved by the Board of Directors on the proposal of the Director. The procedure for determining the contribution of each State is set out in the Protocol of agreement on financial matters annexed to the Convention.

FINANCIAL PROTOCOL ANNEXED TO THE CONVENTION ESTABLISHING THE ADVANCED INTERNATIONAL SCHOOL OF JOURNALISM OF YAOUNDÉ

The following provisions have been agreed upon:

Art. 1. The purpose of this Protocol is to determine, in accordance with the provisions of article 12 of the Convention establishing the AISJY, the amount of the scholarships and the scale of the financial contributions devolving upon the Parties.

Art. 2. The budget of the Advanced International School of Journalism of Yaoundé shall be the responsibility of the States signatories to the Convention establishing the School.

...

CONGO (DEMOCRATIC REPUBLIC OF)

LEGISLATIVE ORDINANCE No. 70-026 OF 17 APRIL 1970 CONCERNING THE ORGANIZATION OF ELECTIONS TO THE LEGISLATURE

Entered into force on the date of signature[1]

CHAPTER I

General provisions

Article 1

Deputies shall be elected by universal direct suffrage and by secret ballot.

Article 2

Deputies shall be elected for a term of five years unless the term of office is terminated on one of the grounds specified in this legislative ordinance.

Article 3

The electoral districts shall be the City of Kinshasa, the towns and the regional districts.

Article 4

The President of the Republic shall establish by ordinance the number of seats for each electoral district, on the basis of one deputy per 50,000 inhabitants, excluding aliens. Each additional fraction of the population consisting of 25,000 or more inhabitants shall confer entitlement to one additional deputy.

Article 5

The President of the Republic shall establish by ordinance the dates of the electoral period and of the voting.

CHAPTER II

Conditions governing entitlement to vote

Article 6

All Congolese of both sexes who have attained the age of 18 years on the date on which the electoral rolls are finally closed and who are not barred on any of the grounds specified in this legislative ordinance shall be entitled to vote.

Article 7

Members of the Armed Forces and the National Police Force shall not be entitled to vote.

Article 8

A person shall not be entitled to vote, even if his name appears on an electoral roll, if, on the day of the election, he is:

Held in custody;

Confined in a hospital or other institution because of mental illness;

Resident abroad.

CHAPTER III

Electoral rolls

Article 9

Persons who fulfil the conditions required of a voter shall be registered on the electoral roll of the local community or commune in which they reside, provided that they have been resident in the district or town for more than one year on the date on which the electoral roll is closed.

Persons who do not fulfil this condition may, however, be registered on the electoral roll concerned if they can prove that they are not registered on the electoral roll of another local community or commune.

Article 10

No person may be registered on more than one electoral roll.

...

Article 13

Any person who has been improperly registered or who has been omitted from an electoral roll

[1] *Moniteur Congolais*, No. 9, of 1 May 1970.

may file a complaint with the head of the local community or the burgomaster . . .

Article 14

If the head of the local community or the burgomaster dismisses the complaint or fails to give a ruling within the prescribed period, the complainant shall be entitled to address an appeal to the chairman of the main committee . . .

The main committee shall give a ruling within 10 days of the receipt of the appeal.

. . .

Article 16

A main committee shall be set up in each electoral district . . .

CHAPTER IV

Conditions of eligibility

Article 17

All Congolese of both sexes who have attained the age of 25 years on the final date for the declaration of candidatures may stand for election and be elected, subject to the following conditions:

Article 18

The following persons shall be barred from standing for election:

1. Persons who have been sentenced to a principal penalty of a term of imprisonment for an offence under the general law, even if the sentence has been suspended, if the length of such a term is:

(a) More than one year during the previous five years;

(b) More than three years during the previous 10 years;

2. Persons confined in a hospital or other institution because of mental illness;

3. Persons serving a term of imprisonment under a definitive sentence;

4. Persons who are not active members of the People's Revolutionary Movement;

5. Persons whose candidature has not been approved by the Political Committee of the Party;

6. Persons who have not deposited 100 zaires with the main committee of their electoral district. A receipt shall be given for the deposit, which is reimbursable to a person whose candidature has not been approved by the Political Committee of the Party.

The last date for the declaration of candidatures shall be taken into account when applying the provisions of this article.

Article 19

Members of the Armed Forces and the National Police Force may not stand for election.

Article 20

Civil servants and public employees who have been elected must apply to the Minister of Public Service to release them from their duties for personal reasons.

. . .

CHAPTER V

Submission of lists

Article 21

The term "list" as used in this legislative ordinance refers to actual lists containing the names of several candidates arranged in a particular order.

Article 22

Candidates shall present themselves for election by means of lists drawn up under the auspices of the National Party.

. . .

Article 25

The lists shall be submitted to and deposited with the chairman of the main committee of each electoral district by the Political Committee of the National Party.

. . .

CHAPTER VI

Electoral propaganda

Article 29

Election meetings shall be subject to the general regulations governing public meetings.

Article 30

Throughout the electoral campaign, special sites shall be set aside by the head of the local community or the burgomaster for the affixing of electoral posters. In particular, such sites shall be made available in front of every polling station.

Article 31

The conditions governing the use of radio-broadcasting stations for electoral propaganda shall be laid down by the Minister of Internal Affairs with the consent of the Minister of Information.

CHAPTER VII

Voting procedures

Article 32

Two ballot-papers shall be used in the voting, one indicating an affirmative vote, and the other a negative vote, for the list.

. . .

Article 33

One or more polling committees shall be established in each commune and in each local community.

. . .

Article 41

Each polling station shall be provided with one or more booths.

Article 42

On arrival, each voter shall present his identity documents. Once the voter's status has been verified, the chairman of the committee shall place a mark against his name on the electoral roll. His assistant shall then hand the voter an envelope and two ballot-papers which shall have been initialled by the chairman immediately before.

Article 43

After receiving the envelope and ballot-papers, each voter shall enter a polling booth without delay, record his vote and insert the ballot-paper of his choice into the envelope. He shall then leave the booth and himself insert the envelope into the ballot-box.

The voter must vote for the list and not for the individual candidates.

Article 44

Any voter suffering from a disability which prevents him from performing this operation alone may, with the consent of the chairman, be assisted by a person of his choice.

. . .

CHAPTER VIII

Announcement of results

Article 55

The main committee shall proceed, in the presence of witnesses of the Party, to check the votes counted by each of the counting committees and, if necessary, to rectify any material errors.

. . .

CHAPTER IX

Incompatibility and vacancies

Article 58

Without prejudice to any of the conditions of incompatibility specifically established in other legislation, membership of the National Assembly shall be incompatible with the following offices or functions:

1. The Presidency of the Republic;
2. The office of Judge of the Constitutional Court;
3. The office of Counsellor of the Audit Office;
4. A judgeship;
5. The offices of provincial governor or commissioner or urban governor or commissioner;
6. Public employment;
7. Any other elective public office;
8. The functions of an appointed member of a local community.

Article 59

If the person elected is ineligible under the provisions of article 58 above, he must opt, within eight days or receiving notice of his election, between membership of the National Assembly and any other office which he may hold.

If he fails to declare his option within the prescribed period, he shall be deemed to have withdrawn from membership of the National Assembly.

. . .

CHAPTER X

Termination of term of office

Article 61

The term of office of a member of the National Assembly shall be deemed to terminate when or if:

1. The legislature ends;
2. He dies;
3. He resigns and his resignation is accepted by the National Assembly;
4. He becomes permanently physically disabled;
5. He is absent without justification or authorization for more than one quarter of the total number of meetings held during a regular session;
6. He loses Congolese nationality;
7. He acquires some status incompatible with membership of the National Assembly;
8. He is barred by one of the conditions of ineligibility specified in the legislative ordinance;
9. He ceases to be a member of the Party.

CHAPTER XI

Supervision of elections

Article 62

The chairman of the polling committee shall be responsible for making the necessary arrangements to ensure order and tranquillity in the polling station and for a radius of 300 metres around.

He may delegate this task to a member of the committee.

He may give orders for anyone who causes a disturbance or refuses to comply with instructions to be apprehended and conducted to a police station.

Persons thus apprehended shall be detained until the election is over, but not for more than 24 hours.

Voters shall not be permitted to remain in the polling station any longer than is necessary for them to cast their votes.

. . .

CHAPTER XII

Penal provisions

Article 65

Subject to the provisions of articles 7, 8 and 9, voting shall be compulsory.

Any voter who, without a legitimate reason, fails to vote shall be liable to a fine of between 20 and 50 makuta.

The chairman of the polling committee shall transmit to the competent court a list of the voters who have not voted.

Article 66

If a chairman, assistant, or deputy assistant fails, without a legitimate reason, to perform the duties assigned to him, he shall be liable to a maximum fine of 2 zaires.

Article 67

Any person who directly or indirectly gives, offers or promises either money, valuables, property or any other benefits, or assistance or employment, in order to influence a voter to vote affirmatively or to refrain from voting, or makes such gifts, offers or promises conditional upon the results of the election, shall be liable to a maximum penalty of six months' imprisonment and a fine which shall not exceed 5 zaires, or to one of these penalties only.

Any person who accepts such offers or promises shall be liable to the same penalties.

Article 68

Any person who attempts to induce a voter to abstain from voting or to change his vote by means of assault, violence, intimidation, threats of loss of employment or injury to the voter or his family, or damage to his property, shall be liable to a maximum term of imprisonment of six months and a fine which shall not exceed 5 zaires, or to one of these penalties only.

Article 69

Any person who, by making speeches in meetings or public places, displaying posters, selling or distributing printed or handwritten material, displaying drawings or emblems, or using any other means, attempts to dissuade the people from voting, shall be liable to the penalties specified in the preceding article.

Article 70

Any person who wittingly provides funds for the commission of the offences enumerated in the preceding articles, authorizes someone else to make offers, promises, threats or incitements or to commit acts of violence on his behalf, shall be punished as though he was the perpetrator of such offences.

Article 71

If, in the cases provided for in articles 67, 68 and 69, the offender is a public employee, the maximum penalty shall be given and the term of imprisonment and the fine may be doubled.

. . .

Article 80

Any chairman or assistant of a committee who does not respect the secrecy of the voting shall be liable to a maximum term of imprisonment of two months and to a fine which shall not exceed 2 zaires, or to one of these penalties only.

The penalty may be doubled if the revelation causes disturbances.

. . .

LEGISLATIVE ORDINANCE No. 70-027 OF 17 APRIL 1970 CONCERNING THE ORGANIZATION OF THE ELECTION OF THE PRESIDENT OF THE REPUBLIC[2]

Entered into force on the day of its signature

CHAPTER I

General provisions

Article 1

The President of the Republic shall be elected by direct universal suffrage and by an absolute majority of the votes cast in secret ballot.

...

CHAPTER II

Conditions governing entitlement to vote

Article 4

The conditions governing entitlement to vote in the election of the President of the Republic shall be those laid down in articles 6, 7 and 8 of the Legislative Ordinance concerning the organization of elections to the legislature.

...

CHAPTER III

Electoral rolls

Article 5

The provisions of articles 9 to 16 of the Legislative Ordinance concerning the organization of elections to the legislature shall apply to the drawing up of the electoral rolls for the election of the President of the Republic.

CHAPTER IV

Conditions of eligibility

Article 6

No candidate may stand for election to the Presidency of the Republic unless:

1. He is a Congolese citizen by birth;
2. He has attained the age of 40 years;
3. He fulfils the conditions of eligibility for membership of the National Assembly.

The date of the declaration of candidature shall be taken into consideration when applying the provisions of this article.

CHAPTER V

Presentation and declaration of candidature

Article 7

The candidate for the Presidency of the Republic shall be presented by the National Party.

...

Article 10

Under the terms of this Legislative Ordinance, a candidature shall be null and void if the candidate:

Has not been presented by the National Party;

Does not fulfil the conditions of eligibility;

Has not agreed to stand for election.

CHAPTER VI

Electoral propaganda

Article 11

The provisions relating to electoral propaganda of the Legislative Ordinance concerning the organization of elections to the legislature shall apply to the election of the President of the Republic.

...

[2] *Ibid.*

LEGISLATIVE ORDINANCE No. 70-012 OF 10 MARCH 1970

Entered into force on the day of its signature[3]

Art. 1. Any offence committed in the court-room during a hearing may be judged immediately.

The president shall have the clerk of the court draw up a report and, if necessary, will hear the accused and the witnesses. After hearing the representative of the Ministère public, if he is present, the court will forthwith pronounce the penalties prescribed by law.

[3] *Moniteur Congolais*, No. 10, of 15 May 1970.

Art. 2. Unless the perpetrator of the offence is entitled, under the Constitution, to be tried by a particular court, he may be sentenced by the court before which the offence was committed, provided that the penalty to be applied is within the competence of that court when it is trying a criminal case.

Art. 3. Unless the sentence was delivered by the Supreme Court of Justice, an appeal may be brought, irrespective of the offence and the penalty, by the convicted and sentenced person, the party who has incurred civil liability, the Ministère public or the civil claimant in a criminal case.

Art. 4. If the sentence was delivered by a court sitting in its civil capacity, the appeal shall lie to the immediately superior court, sitting in its criminal capacity.

If the sentence was delivered by an appeal court, the appeal shall lie to the judicial section of the Supreme Court of Justice, sitting with five members.

Art. 5. The appeal shall be filed, proceeded with and judged in the manner laid down in the code of penal procedure.

...

ORDINANCE No. 70-093 OF 11 MARCH 1970 REGARDING THE ORGANIZATION OF THE JUDICATURE, ESTABLISHING THE LOCAL COURTS[4]

Article 1

The local courts shall be established and supervised by a *Magistrat Inspecteur,* seconded for that purpose, and exercising responsibility over the area of an appeal court.

...

Article 2

The function of the *Magistrat Inspecteur* shall be:

1. To investigate the possibility of recruiting local judges and local assessor judges from among the judicial personnel of the indigenous courts — which are gradually to be superseded — and to draw up suggestions regarding their appointment or retirement.

2. To ensure the establishment and installation of the local courts and to exercise proper judicial and administrative supervision over these courts.

3. To organize the recruitment of candidates and the training school for judges and clerks of the local courts.

...

Article 4

...

As from the end of the first year in which the local judge exercises his functions, the *Magistrat Inspecteur* shall be required to draw up a report evaluating his intellectual and moral aptitude for discharging on a permanent basis the office to which he has been provisionally appointed.

...

Article 5

Practical courses in written and customary private law, penal law and procedure shall be organized for the local judges appointed from among the personnel of the indigenous courts, which they shall attend concurrently with the discharge of their functions as local judges under the supervision and responsibility of the *Magistrat Inspecteur.*

The professional activities and academic aptitude of these local judges shall be evaluated by the *Magistrat Inspecteur* in accordance with article 4.

Article 6

The other candidates for the office of local judge shall be required to pass through the training school for judges and clerks of the local courts organized by the Minister of Justice.

Provided they have passed the final examinations they shall be appointed on a provisional basis as need arises, account being taken of their results.

Article 7

The Minister of Justice is charged with the implementation of the present Ordinance.

---

[4] *Ibid.*

COSTA RICA

ORGANIC LAW No. 4639 OF 15 SEPTEMBER 1970 CONCERNING THE RURAL ASSISTANCE GUARD OF COSTA RICA

To enter into force as from 1 January 1971*

Art. 1. There shall be established a Rural Assistance Guard Corps which shall serve for the maintenance of order and the assistance of the rural population in accordance with the terms of reference set forth in this law.

The Rural Assistance Guard shall collaborate with the Police Force *(Fuerza Publica)*, without forming part of it, and its members shall, while fulfilling their functions, have the same status as members of the Police Force.

Art. 2. The Rural Assistance Guard Corps shall have jurisdiction throughout the Republic. The Fiscal Guards *(Resguardo Fiscal)* and the Town and Village Police Force *(Policia de Villas y Pueblos)* shall be incorporated in the Rural Assistance Guard.

Art. 3. The functions of the Rural Assistance Guard shall be:

(a) To ensure the safety of persons and property;

(b) To supervise and maintain public order in the provinces, cantons, districts and settlements;

(c) To ensure observance of the laws against contraband and narcotics and of the laws for the protection of public property;

(d) To co-operate in the protection and supervision of frontiers, coasts, customs posts and ports;

(e) To pursue and apprehend lawbreakers;

(f) To give literacy classes to adults in those rural areas not yet served by the Ministry of Public Education;

(g) To collaborate in health and hygiene campaigns;

(h) To advise rural workers in animal husbandry;

(i) To promote community development activities;

(j) To prevent attacks against forest or archaeological property;

(k) To co-operate in preserving forest fauna;

(l) To collaborate with the Ministry of Finance, at the latter's request, in matters concerning supervision of public property; and

(m) Any other work for which its members have been expressly prepared.

In order to fulfil its functions, the Rural Assistance Guard shall have the same power and attributions with respect to arrest, detention, confiscation and search as those now exercised by the Towns and Villages Police Force and the Fiscal Guards.

Art. 4. The Rural Assistance Guard shall be under the direct responsibility of the Ministry of Government.

. . .

* *La Gaceta*, No. 212, of 23 September 1970.

CZECHOSLOVAKIA

NOTE*

ACT CONCERNING THE ORGANIZATION OF COURTS AND THE ELECTION OF JUDGES (No. 19/1970 COLLECTION OF LAWS)

The Act provides for the system of courts corresponding to the federative set-up of the State and lays down competences in individual instances. This system consists of district courts, regional courts, supreme courts of republics and the Supreme Court of the Czechoslovak Socialist Republic.

The Act also provides for the basic principles of the organization and activity of courts. These are mainly the following principles:

(a) Judicial activity is carried out with the broad participation of the people in fulfilling their duties, the courts shall act in close co-operation with other State organs and social organizations and endeavour to integrate the broadest masses of the citizens into the fight against violations of the socialist legal order;

(b) Professional and lay judges are equal in making decisions; only a professional judge can act as a chairman of the senate;

(c) All citizens are equal before the law and before the court;

(d) Every citizen shall be able to address a court in his mother tongue;

(e) Proceedings in all courts shall be, in principle, oral and public; the public may be excluded only in instances set out by the law;

(f) In judicial proceedings, the courts shall always act so as to ascertain the true state of the matter and shall proceed therefrom in making their decisions;

(g) When adjudicating offences against the society, the courts may impose only penalties fixed by the law and for offences listed in the law;

(h) The accused shall have the right of defence, including the right to choose a defence counsel.

Under the Act, any citizen of the Czechoslovak Socialist Republic who is *sui juris*, incorruptible, who is devoted to the socialist order, is politically, morally and professionally qualified, is eligible to vote in elections and has attained the age of 24, may be elected judge. Professional judges, in addition to the above, must have complete university education in law and must pass successfully the professional judicial examination.

Judges of the Supreme Court of the Czechoslovak Socialist Republic are elected and recalled by the Federal Assembly. Professional judges of the courts of republics are elected and recalled by the respective national council of the republic concerned. Lay judges of the courts of republics are elected and recalled by national committees according to laws of national councils.

Under the Act, the judges, in exercising their office, shall observe the laws and other legal regulations, interpret them in the interest of the working people and issue just decisions.

A judge may be recalled from the function if he has seriously violated his judicial duties, if his state of health does not permit him to exercise his duties properly or if he has reached the age of 65. A judge may be relieved of his office on his own request if he is unable to exercise it permanently because of his being appointed into another socially important function, or because of illness or any other serious reason.

ACT OF THE CZECH NATIONAL COUNCIL No. 35/1970, COLLECTION OF LAWS, CONCERNING THE ELECTION OF LAY JUDGES

The Act provides for the election of the lay judges of district and regional courts. Lay judges are elected upon the proposal of the appropriate organ of the National Front by the national committees.

The National Committee may recall, upon the proposal of the organ of the National Front, a lay judge who seriously violates his judicial duties, or if his health does not permit him to duly exercise his judicial duties. If a lay judge cannot permanently exercise his duties because of illness or another serious reason, he may be relieved of his office on his own request by the organ that had elected him.

NOTICE OF THE FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS No. 23/1970, COLLECTION OF LAWS, CON-

* Note furnished by the Government of the Czechoslovak Socialist Republic.

CERNING THE SETTLEMENT OF LABOUR DISPUTES BY COMMISSIONS FOR LABOUR DISPUTES

In conformity with respective provisions of the Labour Code, this Act provides for the establishment of commissions for labour disputes, sets out their competence, the way they are to be established and their work procedures.

ACT No. 71/1970, COLLECTION OF LAWS, CONCERNING THE ADJUSTMENT OF SOME LOW PENSIONS AND OTHER CHANGES IN SOCIAL SECURITY

The Act provides for an amount by which a pension, that is the pensioner's only source of income can be increased. The Act applies to old-age benefits, disability pensions and those of widows and orphans.

Similar measures apply under the Notice of the Federal Ministry of Labour and Social Affairs No. 77/1970, Collection of Laws, to private farmers and other self-employed persons and to the members of their families.

CONSTITUTIONAL ACT No. 125/1970, COLLECTION OF LAWS, CHANGING AND AMENDING THE CONSTITUTIONAL ACT No. 143/1968, COLLECTION OF LAWS, CONCERNING THE CZECHOSLOVAK FEDERATION

The Constitutional Act provides for certain modifications of the competence of the federation and that of national republics, as well as of the competence of federal and national organs.

NOTICE OF THE MINISTRY OF LABOUR AND SOCIAL AFFAIRS No. 156/1970, COLLECTION OF LAWS, CONCERNING THE FINANCIAL AND MATERIAL SECURITY OF APPRENTICES IN BOARDING SCHOOLS FOR YOUTH REQUIRING SPECIAL CARE AND IN APPRENTICES' SCHOOLS ATTENDED BY APPRENTICES FROM INSTITUTIONS OF SOCIAL CARE FOR THE HANDICAPPED

The Notice provides for the period of the apprentice's training, which is divided into the preparatory period and the period of professional development and the length of which it is determined on the basis of the demand of individual fields of training and its total length. It further sets forth the categories of fields of training, solves the question of remuneration of apprentices in the preparatory period and in that of professional development and deals with the question of meals and accommodation for apprentices.

The purpose of the Notice is to lay down the specific material conditions which are necessary for the future employment of young people with mental and bodily defects and defects of perception.

NOTICE OF THE FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS No. 158/1970, COLLECTION OF LAWS, CONCERNING THE DIRECTION OF THE DEVELOPMENT OF WAGES AND CONCERNING THE PRINCIPLES OF REMUNERATION FOR WORK

The Notice applies to the wage questions, individual forms of wages, question of remuneration, bonuses and shares in the economic results and premiums, allowances, wage preferences and extra payment in kind.

The Notice also deals with wage funds, their direction, binding limits of wage funds, premium funds, wage control and principles of norm-fixing.

NOTICE OF THE FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS No. 159/1970, COLLECTION OF LAWS, CONCERNING THE GRANTING OF REWARDS ON THE OCCASION OF IMPORTANT WORK OR LIFE ANNIVERSARIES

The Notice provides for the granting of rewards by organizations to those employees who have reached the 25th year of their employment, or who have reached the age of 50, or who have terminated their employment after acquiring the right to an old-age pension or invalidity pension, as the recognition and appreciation of their long-term and meritorious work for the development of the socialist society. This reward may reach the amount of 2 500,– Kčs.

DAHOMEY

ORDER No. 70-34 C.P. OF 7 MAY 1970, CONTAINING THE CHARTER OF THE PRESIDENTIAL COUNCIL*

Preamble

We, Hubert Maga, Justin Ahomadegbe-Tometin, Sourou-Migan Apithy, the political leaders of Dahomey,

Declare our firm intention to achieve national unity, to bring about a reconciliation between the sons of this country and to ensure our common fatherland the stability that it needs and must have for its economic and social development;

Condemn arbitrariness, injustice, corruption, speculation, regionalism and nepotism;

Reaffirm Dahomey's attachment to the principles of democracy and human rights as defined in the Declaration of the Rights of Man and of the Citizen of 1789, the Universal Declaration of 1948 and the United Nations Charter;

Confirm Dahomey's attachment to the cause of African unity and to co-operation with all peoples of the world in peace, justice, liberty, equality and independence.

In witness whereof

We solemnly adopt the present Charter, which we swear loyally to uphold and respect.

TITLE I

The State and Sovereignty

Art. 1. French shall be the official language.

Art. 2. The Republic of Dahomey is one and indivisible, secular, democratic and social.

TITLE II

Rights and duties of citizens

Art. 3. The Republic of Dahomey shall guarantee all fundamental freedoms.

It shall guarantee freedom of speech, freedom of the press, freedom of assembly and association and freedom to hold parades and demonstrations under the conditions laid down in this order.

Art. 4. The Republic of Dahomey shall recognize the right of all citizens to work and shall strive to create conditions that will enable them to exercise this right.

Art. 5. The workers' trade union rights, including the right to strike, shall be recognized. This right shall be exercised subject to the conditions laid down in this order.

Art. 6. No one may be arbitrarily detained.

An accused person shall be presumed innocent until proved guilty as a result of proceedings which shall comprise safeguards guaranteeing his defence. The judicial authority, which is the guardian of the individual's liberties, shall ensure that this principle is respected in the ways established by order.

Art. 7. The home shall be inviolable.

Art. 8. The secrecy of correspondence shall be guaranteed by order.

Art. 9. The Republic shall ensure equality to everyone before the law, without distinction as to origin, race, sex or religion. It shall respect all beliefs.

All particularist propaganda of a racial, regional or ethnic nature and all demonstrations of racial discrimination shall be punished by law.

Art. 10. It is the sacred duty of all citizens of Dahomey to defend their country and its territorial integrity.

TITLE III

The Presidential Council

Art. 11. The Presidential Council shall be the supreme organ of the State.

...

Art. 13. The Presidential Council shall be the embodiment of national unity.

It shall guarantee the independence and territorial integrity of the country and respect for international treaties and agreements.

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* *Journal Officiel de la République du Dahomey*, No. 16, of 1 July 1970.

By its decisions, it shall ensure the operation of the public authorities and the continuity of the State.

Art. 14. The Presidential Council alone shall exercise legislative and executive power.

It shall determine national policy.

...

Art. 21. The Presidential Council shall negotiate and ratify international treaties and agreements.

Art. 22. As from the date of their publication, duly ratified treaties shall take precedence over national legislation provided, in each case, that such agreements or treaties have been put into effect by the other parties to them.

...

TITLE IV

The President of the Presidential Council

Art. 27. The President of the Presidential Council shall direct national policy in agreement with the Council.

...

TITLE V

Relations between the Presidential Council and the Government

Art. 35. Ministers shall be directly responsible to the President of the Presidential Council who shall be Head of State and Head of Government.

...

Art. 37. The President of the Presidential Council shall preside over the Council of Ministers.

Art. 38. All statutory orders and decrees shall be approved by the Council of Ministers.

...

TITLE VI

The Supreme Court

Art. 43. The Supreme Court is the highest authority of the State in constitutional, administrative, judicial and financial matters.

There shall be no appeal from its decisions. They shall be mandatory for the public authorities, all legal jurisdictions and all administrative authorities.

The Supreme Court shall ensure that there are no irregularities in the organization of elections and the referendums, and it shall announce the results thereof.

It may be consulted by the Presidential Council on all draft orders and decrees and on more general matters, such as administrative and jurisdictional questions.

It shall have no power of decision regarding the advisability of the drafts submitted to it.

...

TITLE VII

Judicial authority

Art. 45. Justice shall be administered in the territory of the State in the name of the people.

In the fulfilment of their functions, judges shall be subject to no other authority than that of the law.

Art. 46. The Presidential Council shall guarantee the independence of the judges.

It shall be assisted by the High Council of the Judiciary.

...

TITLE VIII

Other State institutions

Art. 50. The following shall be created and installed:

(1) A National Consultative Assembly consisting of three sections:

(a) Economic Section;

(b) Social Section;

(c) General Policy Section;

(2) Consultative Councils at the departmental, urban district and village levels;

(3) A State supervisory body under the President of the Presidential Council who is in office.

...

TITLE VI

Miscellaneous provisions

Art. 53. The Army shall guarantee the régime established by the present Charter. It shall take an oath to that effect before the Presidential Council.

Art. 54. The necessary regulations for the application of this Charter may be laid down either by order or by decree.

Art. 55. The legislation currently in force in Dahomey shall remain applicable, unless new laws are adopted, in so far as it does not conflict with this Charter.

Art. 56. Pending general elections and the establishment of a constitutional régime this Charter shall be applied as the "basic law" of the State.

DENMARK

NOTE[1]

During 1970, the Danish Government has introduced two Bills to the Danish Parliament in order to make it possible for Denmark to ratify the United Nations Convention of 21 December 1965 on the Elimination of All Forms of Racial Discrimination[2] and the United Nations Covenant of 16 December 1966 on Civil and Political Rights.[3]

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[1] Note furnished by Mr. Niels Madsen, government-appointed correspondent, Copenhagen.

[2] See *Yearbook on Human Rights for 1965*, pp. 389-394.

[3] See *Yearbook on Human Rights for 1966*, pp. 442-450.

ECUADOR

SUSPENSION OF THE RIGHT OF *HABEAS CORPUS*

Supreme Decree of 14 August 1970[1]

Whereas:

By Supreme Decree No. 01, the Political Constitution of 1946 was declared to be in force in so far as it was not inconsistent with the purposes of the political transformation of 22 June of the current year;

In order to fulfil its commitment to the moral and economic recovery of the country, the Supreme Government requires an atmosphere of peace, tranquillity, internal order and respect for authority;

In order to ensure such an atmosphere, it finds it necessary to repress any attempt at subversion and disturbance; and

The exercise of the right of *habeas corpus* during times of institutional irregularity disturbs the peace and the normal development of municipal life;

It is hereby decreed:

Art. 1. The guarantee to the right of *habeas corpus* shall be suspended until the country returns to the rule of law;

Art. 2. The municipal authorities shall register any appeals that may be submitted invoking this guarantee;

Art. 3. This Decree shall enter into force on today's date and shall be executed by the Minister of the Interior.

[1] *Registro Oficial*, No. 41, 19 August 1970.

ACT CONTROLLING THE TRAFFIC IN NARCOTIC DRUGS

Promulgated by Supreme Decree No. 366 of 31 August 1970[2]

PRELIMINARY TITLE

Art. 1. This Act shall regulate all activities connected with the control of the sowing of plants containing raw materials for the production of narcotic drugs, the trade in and lawful use of narcotic drugs, the illicit drug traffic, and the possession and abuse of narcotic drugs and psychotropic substances; the National Narcotic Drugs Control Department shall be responsible for all such activities throughout the territory of Ecuador.

...

TITLE I

Control

Art. 7. It shall be unlawful throughout the national territory to cultivate or exploit the opium poppy *(Papaver somniferum L.)* and the "white poppy" *(Papavoroceae)*, coca *(Erythroxylon coca)* and its varieties *(Erythroxylaceae)*, cannabis *(Cannabis sativa L.)*, its *indica* varieties *(Movaceae)* (marijuana) and any other *indica* plants containing substances considered to be narcotic drugs by international drug control organs and by the National Narcotic Drugs Control Department.

Art. 8. The extraction, refining, crystallization, recrystallization and partial or total synthesis of narcotic drugs and of other drugs subject to control shall also be prohibited unless otherwise specified in this Act.

...

TITLE II

Addicts

Art. 22. Individuals making abusive personal use of natural or synthetic narcotic drugs or psychotropic substances shall be required to undergo disintoxication and rehabilitation treatment for a period to be determined by the responsible physician.

Art. 23. Abusive personal use of narcotic drugs and psychotropic substances shall mean use for other than therapeutic purposes.

[2] *Ibid.*, No. 105, of 23 November 1970.

Art. 24. All members of the police force shall be required to take into custody any person who appears to be under the harmful effects of a narcotic drug or a psychotropic substance and to take him immediately to a psychiatric hospital, or to a general hospital if there is no psychiatric hospital in the vicinity, so that the physicians of such a public health institution may determine whether he is in fact under the influence of a drug.

If the aforementioned physicians find that the person concerned is under the influence of a narcotic drug or psychotropic substance, they shall estimate the degree of his addiction to the drug and shall prescribe, if necessary, the type of treatment and rehabilitation to be given and the period of time required for it.

The directors of the public health institutions concerned shall immediately inform the National Narcotic Drugs Control Department of the diagnosis and the treatment prescribed, and the National Department shall open a file on the addict and ensure that the treatment ordered by the physicians is carried out.

Officials of the National Narcotic Drugs Control Department and the directors of the public health institutions shall keep each other informed as to the patient's condition and how his treatment is proceeding, especially when the addict is not a first offender.

Art. 25. A penalty of one year's imprisonment shall be imposed on persons who are addicted to narcotic drugs or psychotropic substances and who attempt in any way to evade the treatment prescribed by the physicians for their disintoxication and rehabilitation, and during that time they shall undergo the treatment prescribed for them.

...

FEDERAL REPUBLIC OF GERMANY

NOTE[1]

Introduction

In accordance with past practice, the various human rights are presented in the order followed in the Universal Declaration of Human Rights of 10 December 1948 (hereinafter referred to as the Universal Declaration). References to the Declaration and to the corresponding articles of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the first Covenant) and the International Covenant on Civil and Political Rights (hereinafter referred to as the second Covenant), both of 16 December 1966, are given in the section headings.

In view of the great number of court decisions relating to human rights during the period under review, the present survey obviously cannot be exhaustive. It is therefore confined, with few exceptions, to an account of decisions of the highest federal courts, in so far as these decisions reveal new aspects not dealt with in previous court rulings and indicate new developments.

1. Protection of human dignity

(Universal Declaration, preamble and art. 1; first and second Covenants, preambles)

In a decision of 14 April 1970 on a constitutional complaint, which in the event was rejected, the First Division of the Federal Constitutional Court (*BVerfGE*[2] 28, p. 151) held that even an acquittal in criminal proceedings could constitute a violation of fundamental rights – the complainant in the case in point had argued that his human dignity had been violated – by virtue of the reasons on which it was based. Although, as a general rule, the principle that a complaint could be founded only on the substance of a judgement must be observed, statements made in explanation of the reasons for a decision might nevertheless represent a violation of basic rights if they so incriminated the defendant as to constitute a serious and unreasonable infringement of an area protected by a basic right which was not outweighed by the fact of his acquittal.

2. The Principle of Equal Treatment

(Universal Declaration, arts. 2 and 7; first Covenant, arts. 2 and 3; second Covenant, arts. 2, 3 and 26)

Decision by the Federal Constitutional Court, on 14 July 1970 (*BVerfGE* 29, p. 51; *NJW*[3] 1970, p. 1732), proceeded from the assumption that differences in the general social circumstances of categories of persons or occupational groups justified the enactment by the legislator of provisions that were divergent in content, without there being any violation of the principle of equality. In the case in question, the constitutionality of article 19, paragraph 8, third sentence, of the Military Service Act had been challenged on the ground that it allowed compensation for loss of earnings as a result of call-up only to employed persons and not to the self-employed. The Federal Constitutional Court held this distinction to be equitable, in that self-employed persons had a greater degree of personal independence and economic freedom of action than employees usually had. Consequently, self-employed persons could more readily than employees take appropriate steps to avoid or minimize any loss of earnings. There was, therefore, an objective justification for the legislator's action in not allowing self-employed persons, as opposed to employees, relief from any loss of income which occurred.

In a decision of 28 January 1970 (*BVerfGE* 27, p. 391), the Federal Constitutional Court ruled that the principle of equal treatment was violated where a taxpayer who won his case in the finance courts was not reimbursed the costs of obtaining the necessary representation in the preliminary proceedings. A provision to that effect is contained in article 316, paragraph 2, first sentence, of the *Reich* Taxation Ordinance, as amended by the Act of 11 July 1953 (*BGBl*[4] I, p. 511). The court took the view that such a provision placed the citizen at a disadvantage vis-à-vis the tax

[1] Note furnished by Mr. Herbert D. Jesse, government-appointed correspondent, Heidelberg.

[2] Abbreviation of *Entscheidungen des Bundesverfassungsgerichts* (Decisions of the Federal Constitutional Court, officially compiled).

[3] Abbreviation of *Neue Juristische Wochenschrift*.

[4] Abbreviation of *Bundesgesetzblatt* (Official Gazette of the Federal Republic), parts I and II.

authorities, who could require an unsuccessful litigant both to reimburse expenses and to pay a fee for the appeal. The tax authorities thus obtained reimbursement of a major part of the costs occasioned by the taxpayer through his unfounded complaint. By contrast, a taxpayer whose complaint was upheld was reimbursed his other expenses but not the costs of representation. Yet, in complaint proceedings, the latter costs were the taxpayer's major item of expenditure. In view of the complexity of many aspects of tax legislation, it could not be assumed that the taxpayer could generally dispense with expert representation in complaint proceedings. The principle of equality required that the law regarding costs should not place the taxpayer at a disadvantage in cases where the employment of a representative had been necessary in the preliminary proceedings.

During the period under review, the Federal Constitutional Court, in four decisions, dealt with the problem of so-called marriage clauses, which are the subject of considerable controversy among judges and in the legal literature. The cases before the court related to the provisions of various statutes the purport of which was that any entitlement of children or orphans to financial support ceased upon their marriage. In all four cases, the Federal Constitutional Court ruled that such marriage clauses were unconstitutional because they violated the principle of equality and the right to protection of marriage and the family (art. 6, para. 1, of the Basic Law). The Second Division of the court ruled, in its decision of 9 June 1970 (*BVerfGE* 29, p. 1; *NJW* 1970, p. 1679), that the provision of the North Rhine-Westphalia Salaries and Wages Act whereby civil servants were granted a child allowance for unmarried, but not for married children up to the age of 27, provided that they were still receiving education or training, was incompatible with the precept of equality, as there was no evident material ground for different treatment. Admittedly, unmarried children might be in a different position from married children, in that the former had a family relationship (by birth) only to the parents while the latter also had such a relationship (by marriage) to the newly-founded family, which was generally closer than the relationship to the parents. Notwithstanding that difference in the circumstances of their lives, the contested provision was indeed arbitrary, having regard to the fact that, in a borderline case, the civil servant would support both children — married and unmarried — to the same extent out of his income.

The First Division of the Federal Constitutional Court also had occasion to rule on the same problem (*BVerfGE* 29, p. 71; *NJW* 1970, p. 1680) when considering article 2 of the Federal Children's Allowances Act of 14 April 1964 (*BGBl* I, p. 265). It concluded that it was incompatible with the principle of equality to make no provision in the granting of children's allowances, for married children who were still receiving education or training. That applied, of course, only where the spouse was unable to provide support. Children's allowances were a form of social assistance from the State intended to offset in part the increased financial burden on families with several children. In view of that purpose, it was not equitable to place a person entitled to such an allowance at a disadvantage because he had married, even if the marriage had in no way changed his financial burden.

The First Division of the Federal Constitutional Court had already ruled, in earlier decisions, that marriage clauses were unconstitutional in the case of orphans' pensions under the insurance schemes for employed persons and under the Federal Welfare Act (decision of 27 May 1970, *BVerfGE* 28, p. 324, and *NJW*, 1970, p. 1675; decision of 14 July 1970, *BVerfGE* 29, p. 57, and *NJW* 1970, p. 1680) because the total denial to married orphans of the social assistance benefits due to them while they were receiving education or training could not be justified under the Constitution. In those two decisions, however, the prime criterion was the basic right to the protection of marriage and the family, the principle of equal treatment being only a secondary consideration.

3. Protection against arbitrary deprivation of liberty

(Universal Declaration, arts. 3, 4 and 9; second Covenant, arts. 8, 9 and 11)

The norms which give effect to the basic right to protection against arbitrary deprivation of liberty are firmly entrenched in the legal system of the Federal Republic. Consequently, the courts are only rarely seized of questions relating specifically to this basic right. For the period under review, the following judgements are worthy of mention.

In a decision of 27 October 1970 (*BVerfGE* 29, p. 312; *NJW* 1970, p. 2287), the Federal Constitutional Court ruled that an outright refusal, in enforcing a sentence, to deduct a period of detention abroad pending extradition was incompatible with the principle of proportionality. The person involved had been sentenced to one year's imprisonment by a *Land* court in 1958. He avoided serving the sentence by fleeing abroad, where, in the course of police inquiries, he was arrested and spent 8 months and 11 days in detention pending possible extradition before being released. His application to have the time spent in detention deducted from his sentence was rejected, after his return to the Federal Republic, on the ground that a sentence of imprisonment passed by a German court could be executed only in Germany. That ruling was the subject of the constitutional complaint upheld by the Federal Constitutional Court. The Court stated that there were, of course, differences between detention pending extradition and the serving of a final sentence and that the automatic deduction of time spent in detention pending extradition would not appear to be mandatory in every case. Nevertheless, it must be borne in mind that detention by

national authorities pending extradition was no less of a restraint on physical freedom of movement than the serving of a prison sentence and thus anticipated to a substantial degree the purpose of such a sentence.

The constitutionality of an encroachment on the basic right to freedom of person (art. 2, para. 2, second sentence, of the Basic Law) was the subject of a judgement of the Federal Constitutional Court of 15 December 1970 (*DVBl*[5] 1971, p. 142). Under article 26 of the Federal Social Assistance Act, a person may be committed to a workhouse if, despite repeated demands, he persists in refusing reasonable employment, so that he or a person dependent on him has to be provided with constant assistance in order to subsist. A district court sought a ruling from the Federal Constitutional Court on whether that provision was compatible with the Constitution. The court ruled that it was, and noted that freedom of person was a legally protected interest of such importance that it could be restricted only on grounds of exceptional moment. That meant primarily such grounds as were provided for in substantive and procedural penal law, the encroachments involved being for the protection of the community. The committal of an individual under article 26 of the Federal Social Assistance Act was also for the protection of the community; for if the head of a family persistently refused to work, with the result that his dependants had to be supported out of public funds, the community was saddled with costs which could have been avoided. In that connexion, the Federal Constitutional Court reiterated that the intended "improvement" of an adult was not of itself a sufficient ground for deprivation of personal liberty.

4. Judicial and administrative guarantees of due process

(Universal Declaration, art. 8 and 10; second Covenant, arts. 2 and 14)

The question whether or to what extent decisions concerning clemency are subject to judicial review has for years given rise to vigorous controversy among judges and in the legal literature. The views of the courts on this problem were last reported in the *Yearbook on Human Rights for 1968* (cf. the end of section 5 of the 1968 report).

A decision of great significance to constitutional law in the Federal Republic of Germany was the judgement of the Federal Constitutional Court of 15 December 1970 (*BVerfGE* 30, p. 1), which dealt with the question whether it was constitutionally admissible to substitute some other form of independent legal review for recourse to the courts. Under the Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBl* I, p. 709), the importance of which was already noted in the 1968 report, article 10 of the Basic Law was amended to allow the imposition of restrictions on secrecy of mail, of the postal services and of telecommunications as guaranteed by that article, subject to certain conditions, even without notice to the person concerned and with no right of recourse to the courts — in lieu of which supervision was to be exercised by authorities and subsidiary authorities appointed by the parliament. The Act restricting secrecy of the mail, of the postal services and of telecommunications of 13 August 1968 (*BGBl* I, p. 949), which was adopted in connexion with the constitutional amendment, spelt out the occasions and procedures for action (a detailed account of the constitutional amendment and the provisions of the Act of 13 August 1968 is given in section 7 of the 1968 report). A test case directed against this change in the law, and a number of constitutional complaints, were dismissed by the Federal Constitutional Court, with five judges in favour and three dissenting. In explaining its ruling, the court stated that the substitution of some other kind of legal review for recourse to the courts did not violate any immutable constitutional principle, and certainly not that pertaining to human dignity. Respect for a person's status as an individual did, of course, normally require that he should not only be possessed of subjective rights but should be able to defend and enforce his rights by litigation and to plead his case, thus enjoying the protection of the courts in that sense. There was no violation of human dignity, however, if recourse to the courts was excluded not through any disregard of, or lack of respect for, the individual but because of the need to maintain secrecy concerning measures for the protection of the democratic order and of the existence of the State. On the other hand, human dignity would be violated if the exclusion of recourse to the courts resulted in the individual's being exposed to arbitrary action by the authorities. Yet it was precisely that possibility that was excluded by the requirement for a review which, although of a different kind, was materially and procedurally equivalent to judicial review and was, in particular, at least as effective. Such a requirement presupposed that the reviewing authority had the necessary knowledge of the subject-matter and of the law and that it was autonomous. It must exercise constant supervision over all the authorities involved in preparatory arrangements, in decision-making, in carrying out and superintending the infringement of secrecy of the mail, of the postal services and of telecommunications. To that end, all data relevant to a given decision would have to be made available to the supervisory authority. Those requirements would be met by the commission to be appointed under the Act of 13 August 1968. That being so, the exclusion of recourse to the courts was admissible.

In a dissenting opinion, which judges of the Federal Constitutional Court were for the first time enabled to express by the Fourth Act amending the Act concerning the Federal Constitutional Court of 21 December 1970 (*BGBl* I, p.

[5] Abbreviation of *Deutsches Verwaltungsblatt* (German Journal of Administration).

1765), three of the judges took the view that it was not compatible with the Constitution to provide a substitute for recourse to the courts. The guarantee of due process for the individual against acts of public authority was an indispensable principle of the Constitution. The essential feature of that guarantee was that legal protection would be provided by an organ that was materially and personally independent, separate from the executive and the legislature, and hence neutral, was subject to certain safeguards (e.g., the requirement that it should be properly constituted) and could render a decision only after hearing the person who was affected. It was immaterial whether such an organ should be modelled on the traditional type of court, but in any event it was essential that it should meet the test of neutrality — which meant that it must be separate from the legislature and the executive — and should arrive at its decisions by means of orderly proceedings. That required, above all else, that the person affected should be a party to the proceedings. Failing that, the requirement of due process could not be fulfilled by any proceedings in which the person affected was not given a hearing and could not defend himself.

The entitlement to a lawful hearing (art. 103, para. 1, of the Basic Law) was again the subject of many judicial rulings during the period under review. Mention may be made in this connexion of a decision by the Federal Constitutional Court of 8 December 1970 (*BVerfGE* 29, p. 345) on a complaint that the right to a lawful hearing had been violated in a civil case. A *Land* High Court had based a judgement on investigations the results of which had not been communicated to the complainant. The Federal Constitutional Court quashed the judgement and reaffirmed, in accordance with its previous rulings, the principle that a court decision must be based only on facts and evidence on which the parties had a prior opportunity to comment.

The entitlement to a lawful hearing guarantees the parties to legal proceedings the right to submit petitions and make statements before the courts. The Federal Constitutional Court has consistently expressed the view that the courts have a corresponding obligation to take cognizance of the statements of the parties and to give consideration to them in arriving at a decision. The Federal Constitution has now ruled, in a decision of 27 May 1970 (*BVerfGE* 28, p. 378), that, while a court is not obliged to deal explicitly with every utterance that has been made when indicating the reasons for its decision, the right to a lawful hearing is violated whenever it is clear from the special circumstances of a particular case that the court either has taken no cognizance at all of a factual statement by one of the parties or has obviously failed to give consideration to it in arriving at its decision.

5. Protection against interference with privacy

(Universal Declaration, arts. 6 and 12; second Covenant, arts. 16 and 17)

In the course of proceedings concerning a constitutional complaint, the Federal Constitutional Court dealt with the question to what extent the right of personality protected by article 2, paragraph 1, of the Basic Law was violated if a court allowed the examiner in disciplinary proceedings to see the records of a divorce case without the consent of the spouses (*BVerfGE* 27, p. 344; *NJW* 1970, p. 555). The complaint was lodged as a result of the institution of disciplinary proceedings against a civil servant who had previously occupied a high position and was suspected of having carried on an adulterous relationship for several years with his former secretary. During that time he had brought a divorce action against his wife, which he had subsequently withdrawn. The examiner in the disciplinary proceedings sought to inspect the file pertaining to the divorce proceedings. The *Land* court opposed the surrender of the records and the *Land* High Court, to which an appeal was taken, upheld the legality of that decision.

On a constitutional complaint by the civil servant, the Federal Constitutional Court quashed the decision of the *Land* High Court. In stating its reasons, the court noted that, in view of their contents, the records of divorce proceedings were subject to secrecy in accordance with the principle of the general right of personality and the principle of human dignity. Both spouses were equally entitled to that protection. As a general rule, therefore, the content of such records could be made accessible to an outside party only with the express consent of both spouses. The court emphasized, however, that the absolute protection of the basic right to respect for privacy did not extend to the entire sphere of private life. Rather, everyone must submit to measures taken by the State in the public interest, which was paramount, subject to strict observance of the precept of proportionality, in so far as such measures did not encroach upon that area of private life which was inviolable. A particularly high value attached, however, to protection of the integrity of the human person in intellectual and moral matters. Any encroachment on the right of personality of a married couple without their consent was, therefore, admissible only if it could be justified in accordance with the principle of proportionality. In addition to the general weighing of the right to the protection of privacy against the public interest, that principle required that the measure taken should be appropriate and necessary to the achievement of the desired purpose and that the extent of the encroachment involved should not be disproportionate to the importance of the matter and to the strength of the case against the person concerned. Accordingly, in the case in question, the

Federal Constitutional Court quashed the decision of the *Land* High Court because the latter had not shown the necessary care in weighing the considerations involved against each other.

The relation between the right to the protection of privacy and freedom of the press was the subject of a decision by the *Land* High Court at Hamburg (judgement of 26 March 1970, *NJW* 1970, p. 1325). The occasion for the ruling was an application for an injunction against a periodical which had reported on the plaintiff's intention to seek a divorce from her husband. The court found that publication of the report was an unquestionable violation of the plaintiff's privacy. The guarantee of the protection of privacy under articles 1 and 2 of the Basic Law did not normally permit the presentation in the press, without the consent of the parties involved, even of accurate facts concerning a divorce and the related discussions and actions. While it was time that freedom of the press included freedom of information, and known facts could therefore be reported, freedom of the press was restricted by the right of personality. Any weighing of the two fundamental rights against each other must be based on the interests at issue in each particular case, and the right to privacy normally took precedence over the right of the press to freedom of information. It was only where there was a genuine public need for information that the right of the press to freedom of information must prevail over the protection of personality. The public could, by way of exception, be said to have a justified interest in information concerning the private and family affairs of an individual if he or she occupied an expecially prominent position in public life. The plaintiff, however, was not such a "figure of contemporary history". Although through her marriage she had become a member of the House of Hohenzollern, that alone did not make her a figure of contemporary history whose private life could be reported in the press even without her consent. The normal meaning of the "contemporary history" was any current event which affected the interests and concerns of the public at large. However, the members of the House of Hohenzollern were not figures of contemporary history in that sense, since they did not occupy a position in either political or cultural life which would arouse the interest of the general public.

After hearing a case brought by some civil servants whose superior had made a list of their home addresses available to three trade unions in connexion with the preparations for staff council elections, the Federal Administrative Court, in a decision of 4 June 1970 (*BVerfGE* 35, p. 225), dealt with the question of the conditions under which a public-service employer was entitled to disclose to third parties information concerning his staff, including information from the personnel files. Following precedents established by the Federal Constitutional Court (c.f. the decision referred to above, *BVerfGE* 27, p. 344), the court ruled that in principle the personnel files of civil servants were, of course, the kind of records which must be kept secret. The requirement of secrecy extended to the home addresses of employees, as part of the personnel files. However, the general precept that personnel files were to be kept secret did not necessarily mean that they and everything in them must invariably be kept secret. Rather, the provision of information from such files was not prohibited where disclosure of it was clearly in the interest of the employee, much less where, according to the circumstances of the particular case, there was over against the interest of the civil servant which merited protection an overriding interest of the public or even of a third party, equally deserving of protection in disclosure of the information. In the present case, therefore, the interest of the trade unions in ensuring that publicity material in connexion with the staff council elections reached the civil servants by also sending it to their home addresses must be weighed against the interest of the employees in having their home addresses kept secret.

6. The right to freedom of movement and the right to leave the country

(Universal Declaration, art. 13; second Covenant, art. 12)

The Act concerning entry and residence of nationals of States members of the European Economic Community (EEC) (*BGBl* I, p. 927) came into force on 22 July 1969. Under article 1 of the Act, nationals of those States and members of their families are allowed freedom of movement, provided that within the territory to which the Act applies they are engaged in an employment, are self-employed on an established basis or are suppliers or recipients of services. Such persons are entitled to the issue of a residence permit free of cost.

The Administrative Court at Munich took this Act as the basis for its ruling of 12 August 1970 (*DVBl* 1971, p. 364), when it upheld a claim to the issue of a residence permit by an alien who was married to a German woman. The court based its approach on article 7, paragraph 1, of the Act of 22 July 1969, which states that members of the families of persons in the category specified in article 1 of the Act shall be granted residence permits upon application. The division of the Administrative Court which heard the case took the view that this provision should be applied by inference. It concluded that, if aliens from EEC countries acquired the right of residence for members of their families regardless of the latter's nationality, Germans must be all the more entitled to authorization for alien members of their families to reside in the Federal Republic of Germany. The application of article 7, paragraph 1, of the Act of 22 July 1969 followed, in particular, if the Act was constitutionally interpreted in accordance with the principle of equal treatment under article 3 of the Basic Law. If any alien from an EEC country acquired rights for members of his family regardless of their nationality, the same

must apply all the more in the case of residence by alien members of the families of German nationals; for, despite the Act of 22 July 1969, Germans were in a stronger position under the laws relating to residence than were nationals of the States members of EEC. Moreover, to place members of the families of aliens in a better position with regard to the right of residence than the members of a German's family would be materially unjustifiable and therefore arbitrary.

7. The right of asylum; expulsion; extradition

(Universal Declaration, art. 14; second Covenant, art. 13)

The Federal Court of Justice had already ruled, in a decision of 7 February 1968 (*NJW* 1968, p. 1056; cf. section 9 of the 1968 report), on the question whether the re-extradition to a foreign country of a German after he had previously been temporarily extradited was precluded by article 16 of the Basic Law, which prohibits the extradition of any German to a foreign country. The same question has now come before the Federal Constitutional Court (decision of the First Division of 13 October 1970, *BVerfGE* 29, p. 18 and *NJW* 1970, p. 2205). A German national had been sentenced in Austria to a term of several years' imprisonment. At the request of the Minister of Justice of *Land* Lower Saxony he was extradited to Germany, temporarily and on condition that he would be re-extradited later, so that two criminal cases pending against him in Germany could be disposed of. The prisoner lodged a constitutional complaint against the order for his re-extradition which was made after completion of the proceedings. The Federal Constitutional Court held that the re-extradition did not constitute extradition within the meaning of article 16 of the Basic Law. It was, rather, an essential and inseparable component of an aggregate operation which had begun with his temporary extradition and was not, therefore, covered by the prohibition on extradition. The basic notion underlying the prohibition was that every citizen had the right to be allowed to stay in his own country and that the State had an obligation to protect in every way, its citizens living within its territory. That meant, in particular, guarding them against being forcibly taken into foreign territory, there to be tried and sentenced under a legal system that was alien to them. The sense and purpose of the prohibition on extradition, thus defined, did not preclude an act of re-extradition that was merely a sequel to the temporary surrender of the person concerned.

In an action before the Administrative Court of *Land* Baden-Württemberg (judgement of 9 March 1970, *DVBl* 1971, p. 361), the German wife of an alien challenged the expulsion order which had been issued against her husband. The court allowed her to bring the action because she could legitimately claim that expulsion of her husband would also be injurious to her own rights inasmuch as it meant not only depriving him of his right of residence but also encroaching on her marriage and family and thus on her right to protection under article 6, paragraph 1, of the Basic Law. That must be so, in any event, whenever the wife was unwilling to join her husband in his own country after he was expelled. In the case before it, however, the Administrative Court upheld the legality of the expulsion order because the wife could reasonably be expected to join her husband abroad.

8. Protection of marriage and the family

(Universal Declaration, art. 16; first Covenant, art. 10; second Covenant, arts. 23 and 24)

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An account of the fundamental ruling of the Federal Constitutional Court on 29 January 1969 (*BVerfGE* 25, p. 167; *NJW* 1969, p. 597) concerning the legal status of illegitimate children has already been given in the 1968 report. The court declared on that occasion that the legislator must carry out by the end of the current legislative session (September 1969) the constitutional mandate embodied in article 6, paragraph 5, of the Basic Law, which required that, for their physical and mental development and for their position in society, illegitimate children should be given the same opportunities as legitimate children. Should the legislator have failed to act by that date, the constitutional intent would have to be realized so far as possible by the courts.

In pursuance of this constitutional mandate, the Bundestag adopted on 19 August 1969 the Act concerning the legal status of illegitimate children (*BGBl* I, p. 1243). The Act came into force on 1 July 1970. Included in the substantive part of the Act are provisions for amendments to the Civil Code, designed to ensure far-reaching equality of status as between illegitimate and legitimate children. The most important features of the reform may be summarized as follows. The old provision whereby an illegitimate child and his father were not deemed to be related is abolished. The illegitimate child is given the mother's surname as at the time of his birth (art. 1617 of the Civil Code). Parental authority is vested in the mother (art. 1705). A guardian is appointed for the child only for the purposes of establishing paternity and of enforcing claims to maintenance and testamentary or statutory rights of inheritance (art. 1706). The mother may in any event take steps to prevent the appointment of a guardian or to have the guardianship terminated or restricted (art. 1707). Parental authority may be acquired by the father as a result of legitimation (art. 1523). The child himself may apply for legitimation if the parents were betrothed and the engagement was terminated by death (art. 1740 a). As regards entitlement to maintenance, illegitimate children are, in principle, placed on the same footing as legitimate children (art. 1615 a). As the law previously stood, an illegitimate child could generally claim maintenance from his father only up to the age of 18. This age-limit is now abolished. Rules concerning the amount of maintenance have been laid down by

ordinance by the Federal Government. The rules are subject to review every two years. An illegitimate child is also placed on the same footing, financially speaking, as a legitimate child in respect of the laws governing inheritance. Along with the legitimate offspring and surviving spouse of the decedent, an illegitimate child is entitled to a sum of money amounting to the value of a share of the estate, the so-called hereditary portion. In lieu of the hereditary portion, the child may, between the ages of 21 and 27, claim an anticipatory cash settlement of his inheritance in the amount of from one to 12 times the annual maintenance payment, thereby finally surrendering the right of inheritance (arts. 1934 a *et seq.*). The new law applies even to illegitimate children born before the Act came into force, but, so far as inheritance rights are concerned, only to those born after 30 June 1949. The constitutionality of this particular provision is the subject of a constitutional complaint pending before the Federal Constitutional Court (1 *BvR* 810/70).

By the Third Act amending the Civil Service Act of 14 May 1970 (*GBl*,[6] p. 161), *Land* Lower Saxony has given women civil servants and women judges who have at least one child under the age of 16 the option of reducing their working hours by a maximum of one half, with a corresponding reduction in their remuneration. If they have at least one child under the age of 6 or at least two children under the age of 10, they may take leave without pay for a maximum period of three years.

In the judgement of the Administrative Court of *Land* Baden-Württemberg already mentioned in section 9 (*DVBl* 1971, p. 361), the court also commented on the substance of the question whether there was any encroachment on the basic right to protection of marriage and the family (art. 6, para. 1, of the Basic Law). It noted that, in issuing an expulsion order against a married alien, the authorities must weigh the interest of the State in his expulsion against the State-protected interests in the maintenance of marriage and the family. As the order of values established in article 6 of the Basic Law extended to both marriage partners and to all other members of the family, the decision concerning expulsion must take into account not only the particular interests of the person liable to expulsion but also those of his spouse, who was also affected, and of the members of his family. However, there was no encroachment on the rights protected by article 6 of the Basic Law except where the spouse and other members of the family could not reasonably be expected to join the person who was expelled abroad. It was normally to be assumed in that connexion that a German woman who married an alien must anticipate from the outset that she might one day have to join her husband abroad. In the event of expulsion, it could generally be expected that the wife would share her husband's lot by leaving the country with him in order to fulfil her intention and obligation to maintain the marriage community.

[6] Abbreviation of *Gesetzblatt (der Länder)* (Official Gazette (of *Länder*)).

9. Freedom of conscience and religion; freedom of religious practice

(Universal Declaration, art. 18; second Covenant, art. 18)

During the period under review, the courts had occasion to make a number of rulings on questions arising in connexion with the right of conscientious objection to military service, which is afforded special protection as one aspect of freedom of conscience (art. 4, para. 3, of the Basic Law). In a decision of 26 May 1970 (*BVerfGE* 28, p. 243; *NJW* 1970, p. 1729), the Federal Constitutional Court addressed itself to the question whether a serviceman who had applied for recognition as a conscientious objector must perform all his military duties, and in particular must carry arms, while his case was pending. In the specific instance, three members of the armed forces had been placed under detention as a disciplinary measure for refusing to carry arms before they had been recognized as conscientious objectors. The Federal Constitutional Court found that it was not an infringement of the basic right under article 4, paragraph 3, of the Basic Law to regard such conduct as a breach of duty. It was true that the wording of article 4, paragraph 3, of the Basic Law taken by itself, left no room for any interpretation whereby the right of conscientious objection became effective only upon final legal recognition. The absence of any proviso and the close material link to freedom of conscience and human dignity were hallmarks of the importance and special significance of an inalienable and unabridgeable basic right which placed protection of the individual conscience above even the duty to participate in the armed defence of the country and thus in safeguarding its existence as a State. Nevertheless, the Federal Constitutional Court did not unreservedly accept that the right in question was fundamentally unabridgeable. Exceptionally, even unabridgeable rights might be circumscribed in certain respects by conflicting basic rights of third parties and other legal values possessing constitutional rank, regard being had to the unity of the Constitution and the entire range of values to which it afforded protection. The only way to resolve the conflict in such cases was to determine which constitutional provision was of greater consequence in relation to the issue involved. The lesser provision must be overridden only to the extent necessitated by a logical and systematic approach; its essential material substance must in any event be respected. In reaching its decision, the court considered the interest of the as yet unrecognized conscientious objector, on the one hand, as against the necessity of uninterrupted functioning of the armed forces pending the final decision on the question of recognition, and the need to maintain discipline on the other hand. In such circumstances, the securing of the internal order of the armed forces, which must be in a

position to fulfil their military role, must be weighed against the conscientious objector's interest in being free of any compulsion contrary to his decision of conscience. For the purpose of deciding which outweighed the other, the organization of the armed forces and their ability to function possessed constitutional rank, since in the Basic Law military service had been made a constitutional obligation and a basic constitutional decision in favour of military defence had been taken.

In view of the high degree of mechanization of the armed forces, it would mean considerable insecurity and hence a threat to the maintenace of full combat readiness at all times if servicemen were to decide for themselves to refuse to perform military duties. In certain circumstances, such an impaired state of readiness also threatened the security of the State. The resulting situation was not to be compared with that arising from the definitive loss of a serviceman after he had been legally recognized as a conscientious objector. In the latter case the High Command could and must make preparations in advance, but it could not do so when servicemen decided for themselves to refuse to perform military duties. Nevertheless, those arguments in favour of the view that the obligation to serve continued until such time as recognition was accorded did not override the basic right of conscientious objection completely, but only in certain respects. To require the performance of military duties during the recognition proceedings did not infringe the essential substance of the basic right. The sense and purpose of article 4, paragraph 3, of the Basic Law was that a decision, for reasons of conscience, not to perform military service as an armed combatant should be respected and the conscientious objector should be protected from being compelled to kill. However, requiring a conscientious objector to perform armed service in time of peace pending final recognition of his status was not compelling him, against his conscience, to kill another person in a military conflict. He could, therefore, reasonably be expected to continue for a brief transitional period to perform the duties he had carried out in the past, provided, of course, that the recognition proceedings were expedited as much as possible.

In this connexion, the Federal Constitutional Court, in a further decision of the same date (*BVerfGE* 28, p. 264; *NJW* 1970, p. 1731), ruled that there was a violation of the basic right under article 4, paragraph 3, of the Basic Law where a sentence of detention imposed prior to recognition as a conscientious objector was confirmed after such recognition had been accorded. Once recognition had been ordered, there must be no further compulsion to perform military service. Such compulsion included the imposition of a disciplinary measure whose main purpose was not to achieve expiration, retribution or deterrence but to re-educate the person concerned – in other words, to influence his future conduct. Nor could such an attempt to influence the future performance of military service through measures of compulsion be justified on grounds of combat readiness, because the serviceman concerned could now legitimately refuse to perform any military service.

In the view of Federal Administrative Court (judgement of 2 April 1970, *NJW* 1970, p. 1653), for the purpose of determining whether a person liable for military service has taken a decision of conscience against serving as an armed combatant, it is immaterial whether his decision is based on logical thinking or can be refuted on grounds of logic and whether or not the reasons he gives for it are free of self-contradiction. The decision on his application for recognition as a conscientious objector must depend exclusively on whether the review board is satisfied that he is in fact deeply and earnestly convinced in his own mind that, according to the religious outlook to which he is committed, killing in war is a sin and a wrong so grievous that he is bound by his innermost convictions to refuse to perform military service as an armed combatant. The review board is not required to concern itself with the soundness of his reasoning.

10. Freedom of opinion; freedom of information

(Universal Declaration, art. 19; second Covenant, art. 19)

The relationship between the basic right to freedom of opinion and the special military obligations of servicemen was the subject of a case decided by the Federal Constitutional Court on 18 February 1970 (*BVerfGE* 28, p. 55; *NJW* 1970, p. 1267). In a "letter to the editor", a serviceman had criticized an address by one of his superior officers and had been placed under detention for doing so, pursuant to article 17 of the Military Code, which requires members of the forces to show due respect for the rank of their superiors. The court noted in that connexion that article 17 was one of a series of provisions in the Military Code which incarnated the principle of discipline inherent in the nature of an army. The subject-matter of the article was a special duty owed by servicemen to their superiors. Military leadership and authority were inseparable; a soldier must therefore accept the military authority of his superiors and conduct himself accordingly. The purpose of the provision was not to prohibit certain opinions *per se*; what it was needed for was to protect the authority of a superior officer in military matters. However, when article 17 of the Code was considered in terms of its effect on the basic right of freedom of information, it must be interpreted in such a way that the essential value of that right, which led as a matter of principle to a presumption of freedom of speech, especially in public affairs, was in every case preserved. Military discipline and freedom of opinion must be weighed against each other, the normal rule being that differences of opinion with superiors should be settled through service channels. In the case before the court, however, the address by the superior officer had been publicized by the press,

even without the complainant's being involved. It had thus moved out of the realm of the internal affairs of the armed forces into that of public discussion, and the serviceman could not, as a citizen, be denied the right to participate in public discussion. Consequently, the fact that he had publicly commented in a letter to the editor on the publicly reported views of his superior could not be regarded as a lack of the respect due to a superior officer. The principle of discipline was meant to protect the internal order of the armed forces. Differences in military rank were irrelevant to discussions in the press. In that context, the basic right to the free expression of opinion also included the right to criticize the opinions of others.

In a decision of 28 April 1970 (*BVerfGE* 28, p. 191; *NJW* 1970, p. 1498), the Federal Constitutional Court dealt with the question of restrictions on the basic right to freedom of opinion in the case of a civil servant. The court held that the right of a civil servant publicly to criticize an unconstitutional act by the authority employing him was restricted because of his duty of fidelity and loyalty to his employer. A civil servant or public employee who believed that anything unconstitutional was being done in his department or agency must first take his complaint to his superiors, together with suggestions for remedial action. Should those superiors fail to act as the situation required, the civil servant would be expected to proceed, again through official channels, as far as the minister who was responsible to the parliament for the work of the authority involved. After that, as a final resort, he could approach a member of the parliament or could petition the parliament itself. The Federal Constitutional Court agreed, however, that a clear and particularly serious violation of the Constitution could justify the civil servant's bringing the matter to the attention of the public immediately.

The *Land* High Court at Frankfurt, in a decision on 13 August 1970 (*NJW* 1971, p. 530), ruled that a person detained pending investigation must be allowed to use a transistor radio belonging to him, despite the fact that there was an administrative regulation imposing a general prohibition on privately-owned radio sets for listening to broadcasts. The court stated that the basic right to freedom of information, which included the right to the free choice of sources of information, could be overridden in the case of detention pending investigation only where there would be a serious threat to the public interests which such detention was intended to serve. Unless it could show that such a threat genuinely existed in a given case, the person in detention had a constitutionally protected legal entitlement to be granted exemption. Such exemption could not, in particular be refused on the ground that the use of a radio might disturb other inmates. Any danger of that could be avoided by adequate supervision such as would be reasonable even in an institution for detention pending investigation. The difficulties which such supervision might involve must be tolerated, because basic rights — in the case in point, the basic right of freedom of information — existed regardless of what administrative facilities were normally available.

The *Land* High Court at Coblenz took the opposite view, in a decision of 25 November 1970 (*NJW* 1971, p. 531), concerning the right of a convict to use a transistor radio belonging to him. The court held that to give general permission for prisoners to use radio sets of their own while serving their sentence would be incompatible with the purpose for which punishment was imposed. One purpose of imprisonment was to bring home to the prisoner that he must pay the price of wrongdoing. However, that purpose would be jeopardized if a convict was allowed, from the beginning of this term of imprisonment, to organize his free time entirely as he pleased and to listen to whatever broadcasts he himself chose. The *Land* High Court did not rule out the possibility of allowing the use of a privately-owned radio as a special privilege in individual cases, but it stated that no entitlement existed.

11. Freedom of assembly and association

(Universal Declaration, arts. 20 and 23; first Covenant, art. 8; second Covenant, arts. 21 and 22)

The question whether it was compatible with the basic right of freedom of association (art. 9, para. 3, of the Basic Law) to prohibit members of a staff council who also belonged to a trade union from recruiting new members for their union during working hours at their place of work was the subject of the decision of the Federal Constitutional Court of 26 May 1970 (*BVerfGE* 28, p. 295; *NJW* 1970, p. 1635). The court stated that freedom of association guaranteed the right of the individual also to participate in the activities of the association. Such constitutionally protected activities included the recruitment of new members, since article 9, paragraph 3, of the Basic Law protected not only the formation but also the existence of associations. In principle, therefore, the sense and purpose of the provision required that constitutional protection should extend to any activities which were essential if an association's existence was to be maintained and safeguarded, and organizations depended for their existence on the continuous recruitment of new members. However, their right to engage in activities could be subjected to such restrictions as circumstances might necessitate for the protection of other lawful interests, such as the preservation of harmony at the place of work and the confidence of employees in the impartiality of their staff council. Whereas ordinary trade union members could not be prohibited from recruiting new members on the premises and during working hours, such a prohibition was justified in the case of members of the staff council because of the characteristics of their functions. Participation by the staff council in personnel and social affairs could make an effective contribution to the organization of working conditions only if the

council equitably represented the interests of all concerned and the confidence of employees in the objectiveness and impartiality of its members remained intact. The importance of a staff council's participatory rights and of its general responsibilities was such that the council must eschew anything calculated to cast doubt on its status as the representative of all employees and the impartial advocate of their interests.

12. The suffrage and the right of self-determination

(Universal Declaration, art. 21; first Covenant, art. 1; second Covenant, arts. 1 and 25)

The principle of equal suffrage was the subject of a decision of the Federal Constitutional Court of 6 May 1970 (*BVerfGE* 28, p. 220; *NJW* 1970, p. 309). In the course of the restructuring of the federal territory, the former *Länder* of Baden and Württemberg had been amalgamated into a single federal *Land*, Baden-Württemberg. The citizens of the Baden region had to decide in a plebiscite whether Baden should continue to form part of *Land* Baden-Württemberg or whether the old *Land* of Baden should be reconstituted. The Act governing the conduct of the plebiscite made domicile the criterion for eligibility to participate in the vote. Those eligible to vote were persons who, on the date of the poll, were domiciled or permanently resident in the plebiscite region, and were eligible under *Land* law to vote in elections to the Landtag. The question before the Federal Constitutional Court was whether the principle of universal and equal suffrage required that persons born in the plebiscite area but no longer resident there were also eligible to vote in the plebiscite. The court had already ruled in that connexion, in a decision of 23 October 1951 (*BVerfGE* 1, p. 14), that there was nothing in the Basic Law from which it could be inferred that, in the case of a plebiscite, place of birth was either the sole criterion or one of several criteria for determining who was eligible to vote. The formal equality of all citizens under electoral law did not rule out every differentiation. Accordingly, if it was normally left to the discretion of the legislator to decide who was eligible to vote, the same must apply in the case of a plebiscite. Nor was it an argument against the disqualification of persons born but not resident in the plebiscite region to say that newcomers, who might not have any attachment to the region, were eligible to vote in the plebiscite. The question whether a region should become a separate *Land* concerned primarily those citizens who were actually resident in the region. Their living conditions, unlike those of persons born but no longer resident there, were intricately bound up with the tangible political structure of the immediate area in which they lived. That special circumstance justified the differentiation.

The Twenty-seventh Act supplementing the Basic Law of 31 July 1970 (*BGBl* I, p. 1161) introduced a significant change in the field of electoral law. Under the amended version of article 38, paragraph 2, of the Basic Law, any person who has reached the age of 18 years is now entitled to vote and any person who has attained his majority may stand for election. The age of majority is 21 years.

The various federal *Länder* had already enacted legislation of their own lowering the voting age to 18 years and the age of eligibility for election to 21 years. The relevant enactments were: in Baden-Württemberg, the Act of 13 March 1970 (*GBl*, p. 83); in Berlin, the Act of 17 July 1969 (*GBl*, p. 1029); in Hamburg, the Act of 17 March 1969 (*GBl*, p. 33); in Hesse, the Act of 8 May 1970 (*GBl*, p. 295); in Lower Saxony, the Act of 23 March 1970 (*GBl*, p. 36); in North Rhine-Westphalia, the Act of 16 July 1969 (*GBl*, p. 535); in the Saar, the Acts of 9 July 1969 (*GBl*, p. 449) and 11 March 1970 (*GBl*, p. 307); in Schleswig-Holstein, the Acts of 19 June 1969 (*GBl*, p. 110) and 29 May 1970 (*GBl*, p. 129).

13. The right to choose and exercise a profession or occupation

(Universal Declaration, art. 23; first Covenant, art. 6)

The issue in a case before the Federal Administrative Court (judgement of 20 March 1970, *NJW* 1970, p. 1698, and *DVBl* 1970, p. 507) was whether the basic right to freedom of profession or occupation (art. 12 of the Basic Law) was violated by a refusal to issue a police certificate of conduct, required for registration at a university, because penal proceedings were pending against the person concerned. The court ruled in the affirmative and pointed out that, under article 12 of the Basic Law, every citizen had the right freely to choose his trade or profession, place of work and place of vocational training. Free choice of one's place of vocational training included, in particular, the right to attend a university or college of one's choice if the opportunity existed. A police certificate of conduct could only attest to whether or not a person had been convicted of an offence. Its sole purpose was to protect employers against unwittingly appointing persons who had a criminal record to positions of trust. It could not be argued that it also had the purpose of protecting educational or training institutions against unwittingly admitting a candidate who had not been convicted of any offence but against whom penal proceedings were pending. Consequently, there were no grounds whatever for abridging the right to the free choice of a place of vocational training by refusing to provide the certificate of conduct.

The Administrative Court of *Land* Hesse also ruled, in a decision of 1 April 1970 (*DVBl* 1970, p. 739), that restrictions on admissions were compatible with the right to the free choice of a place of vocational training. The Administrative Court at Berlin likewise agreed on this point in its decision of 17 December 1970 (*DVBl* 1971,

p. 150). In the latter case, however, the court also went into the question of the obligation of the State to provide funds for the establishment of adequate instructional facilities. It noted that the State had a duty to take every educational and welfare policy measure that was needed to remedy deficiencies in that respect. It was therefore unsatisfactory, and in the long term unacceptable, that the attainment of unrestricted admission to the universities should be frustrated by their limited capacity because of the State's failure to lend its active co-operation, despite the existence of an intolerable disproportion between instructional facilities and the number of candidates and the prospect of a serious bottle-neck in the provision of medical care to the public which made university expansion an urgent necessity.

14. The protection of rights in labour legislation

(Universal Declaration, arts. 23, 24 and 25; first Covenant, arts. 6 and 7)

The right of an employee to inspect his personnel file was recognized by the Federal Labour Court in a ruling of 17 March 1970 (*NJW* 1970, p. 1391). The court held that that right derived from the employer's duty to safeguard the welfare of his employees, which included protecting them from avoidable handicaps in their working life. In certain circumstances, however, an employee might find himself under such a handicap as a result of his ignorance of the contents of his personnel file. For instance, when changing his job, he would be unable to obtain a position offering real prospects for the future unless he could produce a good reference from his previous employer, and the reference would normally be based on the contents of the personnel file. In order, therefore, to avoid placing the employee under a considerable handicap, it appeared necessary to impose on the employer the obligation of keeping the ongoing assessment of his employee, as recorded in the personnel file, free from misjudgements which had no basis in fact; however, the only way of ensuring that such an obligation was effectively performed was to allow the employee himself a measure of supervision over the assessment by giving him the right to inspect his personnel file.

In the above decision, the Federal Labour Court was addressing itself only to the legal position of an employee of a public corporation. It left open the question to what extent employees of private business concerns must also be given the right to inspect personnel files. Nevertheless, the court did not rule out the application of the principles it had expounded in respect of such employees.

In a decision of 30 September 1970 (*NJW* 1970, p. 480), the Federal Labour Court expressed the view that there were at least some grounds for holding that the right of an employee to his job was an absolute right for the purposes of article 823, paragraph 1, of the Civil Code. The employee accordingly had a litigable claim to compensation if that right was violated.

15. State care for persons in need of assistance

(Universal Declaration, arts. 22 and 23; first Covenant, arts. 9 and 11)

In so far as pensioners have been required under the provisions of the *Reich* Insurance Ordinance to pay for their health insurance out of their pockets, they are relieved of this obligation with effect from 1 January 1970 by the Act of 14 April 1970 concerning the abolition of health insurance contributions payable by pensioners (*BGBl* I, p. 337).

The agreements on social security concluded by the Federal Republic with several other States during the period under review need only be mentioned at this point; they are discussed in more detail in section 22 of the report.

16. Protection of industrial rights and copyright

(Universal Declaration, art. 27; first Covenant, art. 15)

Mention need only be made in this section of the fact that the legislative bodies of the Federal Republic of Germany approved, by Act of 5 June 1970 (*BGBl* II, p. 293), the Convention relating to intellectual property signed at Stockholm on 14 July 1967.

17. International instruments for the protection of human rights

(Universal Declaration, art. 28)

The Federal Republic of Germany has for many years been a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (approved by Act of 7 August 1952, *BGBl* II, p. 685) and has ratified all the Protocols thereto (Act of 20 December 1956, *BGBl* II, p. 1879; Act of 9 May 1968, *BGBl* II, p. 422; Act of 10 December 1968, *BGBl* II, p. 1111). The Federal Republic of Germany recognizes the competence of the European Commission of Human Rights to receive complaints by individuals against the Federal Republic, pursuant to article 25 of the Convention. It has also subjected itself to the jurisdiction of the European Court of Human Rights (article 46 of the Convention). Thus, the Federal Republic accepts without any restriction the effective and exemplary system for international protection of human rights at it exists within the framework of the Council of Europe.

The federal legislator gave further emphasis to the importance of social security at the international level by approving multilateral agreements through the adoption of the following statutes: the Act of 21 August 1970 relating to International Labour Organisation Convention No. 118 concerning equality of treatment of nationals and non-nationals in social security (*BGBl* II, p. 802), and the Act of 15 September 1970 approving the European Code of Social Security of 16 April 1964 and the Protocol to the European Code of Social Security of the same date (*BGBl* II, p. 909).

FIJI

THE CONSTITUTION OF FIJI

Entered into force on 10 October 1970*

And whereas many persons of all races and creeds have come from divers countries and have desired peace and prosperity under the precepts and principles of such Cessions:

And whereas all the peoples of Fiji have ever since acknowledged . . . their reverence for . . . the rights and freedoms of the individual secured and safeguarded by adherence to the rule of law:

And whereas those peoples have become united under a common bond, have progressively advanced economically and politically and have broadened their rights and freedoms in accordance with the dignity of the human person and the position of the family in a society of free men and free institutions:

Now, therefore, the people of Fiji do affirm . . . their unshakeable belief that all are entitled to fundamental human rights and freedoms based upon and secured by the rule of law and to that end desire that the following provisions shall take effect as the Constitution of Fiji:

CHAPTER I

The State and the Constitution

1. Fiji shall be a sovereign democratic State.

CHAPTER II

Protection of fundamental rights and freedoms of the individual

3. Whereas every person in Fiji is intitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

4. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

5. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(a) In consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Fiji 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 or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

* Text furnished by the Government of Fiji. Fiji became an independent State on 10 October 1970.

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(f) Under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Fiji, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Fiji; 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 Fiji 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 with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Fiji in which, in consequence of any such order, his presnce 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 afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in 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, or from any other person or authority on whose behalf that other person was acting.

(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 authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of auch service;

(d) Any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

7. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

8. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of a law that:

(a) Requires the acquiring authority to give reasonable notice of the intention to take possession of, or acquire the interest in or right over, the property to any person owning the property or having any other interest or right therein that would be affected by such taking of possession or acquisition;

(b) Requires the acquiring authority to apply to the Supreme Court for an order authorising such taking of possession or acquisition or to apply thereto within thirty days of such taking of possession for such an order as aforesaid;

(c) Requires the Supreme Court not to grant such an order unless it is satisfied that 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 utilisation of any property in such a manner as to promote the public benefit;

(d) Requires the acquiring authority to pay damages in respect of such taking of possession prior to an application to the Supreme Court when such an order is not granted and requires the prompt payment of adequate compensation for the taking of possession or acquisition where such an order is granted;

(e) Requires the acquiring authority, if no agreement as to the amount and manner of payment of compensation has been concluded with any claimant to compensation within thirty days of the grant of the order referred to in paragraph *(b)* of this subsection, to apply to the Supreme Court for the determination of those matters in relation to that claimant (including, where necessary, any question as to his entitlement to compensation); and

(f) Requires the acquiring authority to pay the costs reasonably incurred by any other party in connection with the proceedings before the Supreme Court for any of the aforesaid purposes, including any appeal (not made unreasonably or frivolously) from any decision of that Court or the Court of Appeal given for those purposes.

(2) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question authorises the taking of possession of property compulsorily 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 and makes provision that:

(a) Requires the acquiring authority promptly to inform any person owning the property of the taking of possession;

(b) Enables any such person to notify the acquiring authority that he objects to the compulsory possession of the property by that authority;

(c) Requires the acquiring authority, in the case of any such notification, to apply within thirty days thereafter to an independent and impartial tribunal, appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji, for a determination of the authority's entitlement to compulsory possession of the property;

(d) Requires the tribunal to order the acquiring authority to return the possession of the property unless the tribunal is satisfied that its possession by that authority is reasonably justifiable, in the circumstances of the situation existing, for the purpose of dealing with that situation;

(e) Requires the prompt payment of adequate compensation for the taking of possession; and

(f) Enables application to be made by any claimant to compensation to the tribunal for the determination of the amount and manner of payment of compensation in relation to that claimant (including, where necessary, any question as to his entitlement to compensation).

(3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji.

(4) 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 authorises:

(a) The attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(b) The imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section:

(a) To the extent that the law in question makes provision for the taking of possession or acquisition of any property:

(i) In satisfaction of any tax, duty, rate, cess or due;

(ii) By way of penalty for breach of the law, or forfeiture in consequence of a breach of the law;

(iii) As an incident of a grant, lease, tenancy, mortgage, charge, bill of sale, pledge, contract, permission or licence;

(iv) In the execution of judgments or orders of a court;

(v) By reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;

(vi) In consequence of any law with respect to the limitation of actions or acquisitive prescription; or

(vii) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out);

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) To the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say:

(i) Enemy property;

(ii) Property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) Property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) Property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(6) Nothing in this section shall affect the making or operation of any law so far as it provides for the vesting in the Crown of the ownership of underground water or unextracted minerals.

(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 for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided from public funds.

(8) For the purposes of subsections (1) and (2) of this section "acquiring authority" means the person or authority intending to take possession of, or acquire the right or interest in, the property compulsorily or who has taken possession of, or acquired the interest or right in, the property compulsorily, as the context may require.

9. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained 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 and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) For the purpose of protecting the rights or freedoms of other persons;

(c) That authorises an officer or agent of the Government, or of a local authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises, and that belongs to that Government, authority, or body corporate, as the case may be; or

(d) That authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;

(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 charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that shall, if he so requires

and subject to payment of such reasonable fee as may be prescribed, 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 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 preceding 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 reasonable conditions that must be satisfied it witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) Subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) For the purposes of subsection (2) of this section a person who has been served with a summons or other process requiring him to appear at the time and place appointed for his trial and who does not so appear shall be deemed to have consented to the trial taking place in his absence.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community, whether or not that community 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 of education

(4) Except with his own consent (or, if he is a person who has not attained 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 which is not his own.

(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:

(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, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

(c) With respect to standards or qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places,

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.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

12. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the reputations, rights or freedoms of others persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) 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.

13. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the rights or freedoms of other persons; or

(c) For the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

14. (1) No 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 Fiji, the right to reside in any part of Fiji, the right to enter Fiji, the right to leave Fiji and immunity from expulsion from Fiji.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For imposing restrictions on the movement or residence within Fiji of any person or on any person's right to leave Fiji that are reasonably required in the interests of defence, public safety or public order;

(b) For imposing restrictions on the movement or residence within Fiji, or on the right to leave Fiji of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health, 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 democractic society;

(c) For imposing restrictions, by order of a court, on the movement or residence within Fiji of any person or on any person's right to leave Fiji either in consequence of his having been found guitly of a criminal offence or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Fiji;

(d) For imposing restrictions on the movement or residence within Fiji of any person who is not a citizen of Fiji or for excluding or expelling any such person from Fiji;

(e) For imposing restrictions on the acquisition or use by any person of any property in Fiji;

(f) For imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of any public officer;

(g) For the removal of a person from Fiji to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

(h) For imposing restrictions on the right of any person to leave Fiji that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph *(a)* of the preceding subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji.

(5) On any review by a tribunal in pursuance of the preceding subsection of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity of expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

15. (1) Subject to the provisions of this section:

(a) No law shall make any provision that is discriminatory either of itself or in its effect; and

(b) 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.

(2) 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.

(3) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) *(a)* of this section to the extent that the law in question makes provision:

(a) For the appropriation of revenues or other funds of Fiji;

(b) With respect to persons who are not citizens of Fiji;

(c) For the application, in the case of persons of any such description as is mentioned in the 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;

(d) For the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law;

(e) Whereby persons of any such description as is mentioned in the last foregoing subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society;

(f) For standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to, or to act in, any public office, any office in the service of a local authority or any officer in a body corporate established by any law for public purposes; or

(g) For authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

(4) Subsection (1) *(b)* of this section shall not apply to;

(a) Anything that is expressly or by necessary implication authorised to be done by any provision of law that is referred to in the preceding subsection; or

(b) The exercise of 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.

(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) of this section:

(a) If the law in question was in force immediately before 23rd September 1966 and has continued in force at all times since that day; or

(b) To the extent that it repeals and re-enacts any provision which has been contained in any written law at all time since immediately before that day.

(6) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(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 (2) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and

14 of this Constitution, being such a restriction as is authorised by section 9 (2), section 11 (5), section 12 (2), section 13 (2), section 14 (3) *(a)* or *(b)*, as the case may be.

16. (1) Where a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period, the following provisions shall apply, that is to say:

(a) He shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) Not more than one month after the commencement of his detention and thereafter, during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons qualified to practise as barristers and solicitors in Fiji;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and

(e) At the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) *(d)* or *(e)* of this section shall be construed as entitling a person to legal representation at public expense.

17. (1) If any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction:

(a) To hear and determine any application made in pursuance of the preceding subsection;

(b) To determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter:

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall, if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his judgment, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of the last foregoing subsection, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) No appeal shall lie from any determination by the Supreme Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

(6) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that court more effectively to exercise the jurisdiction conferred on it by this section.

(7) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the Supreme Court (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

18. (1) In this Chapter, unless the context otherwise requires:

"Contravention", in relation to any requirement, includes a failure to comply with that requirement and cognate expressions shall be construed accordingly;

"Court" means any court of law having jurisdiction in Fiji, including Her Majesty in Council, but excepting, save in sections 4 and 6 of this Constitution, a court established by a disciplinary law;

"Criminal offence" means a criminal offence under the law of Fiji;

"Legal representative" means a person lawfully in or entitled to be in Fiji and entitled to practise in Fiji as a barrister and solicitor;

"Member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in sections 12, 13 or 14 of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(3) In relation to any person who is a member of a disciplined force of Fiji, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(4) In relation to any person who is a member of a disciplined force that is not a disciplined force of Fiji and who is present in Fiji in pursuance of arrangements made between the Government of Fiji and another Government or an international organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(5) No measures taken in relation to a person who is a member of a disciplined force of a country with which Fiji is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) In this Chapter "period of public emergency" means any period during which:

(a) Fiji is engaged in any war; or

(b) There is in force a proclamation by the Governor-General declaring that a state of public emergency exists.

(7) Without prejudice to the power of the Governor-General to revoke at any time a proclamation made for the purposes of the last foregoing subsection, such a proclamation shall lapse at the expiration of six months from the date it was made unless it has in the meantime been approved by a resolution of each House of Parliament, and a proclamation that has been so approved shall remain in force so long as those resolutions remain in force and no longer.

(8) A resolution of either House of Parliament passed for the purposes of the preceding subsection shall remain in force for such period not exceeding six months as may be specified therein:

Provided that any such resolution may be extended from time to time by a further such resolution, each extension being for such period not exceeding six months from the date of the resolution effecting the extension as may be specified therein.

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FINLAND

NOTE*

I. Legislation

1. *Administration of criminal justice*

(a) Act No. 456, of 7 July 1970, on Extradition *(Suomen Asetuskokoelma*, hereinafter referred to as *AsK* – Official Statute Gazette of Finland – No. 456/70) replaces the previous Act on the same subject of 11 February 1922 while Act No. 270, of 3 June 1960, on Extradition between Finland and the Other Nordic Countries (see *Yearbook on Human Rights for 1960*, p. 122) remains in force.

In the new Act, the conditions for extradition are defined in accordance with modern principles manifested in international agreements. First, the cases where extradition is excluded are set forth. Thus, Finnish citizens must not be extradited in any circumstances. For a crime committed in Finland or on board a Finnish ship or a Finnish aircraft, extradition is permissible only if the legal settlement of the crime in the requesting State is to be regarded expedient and the penalty to be inflicted for such a crime in the requesting State does not essentially differ from what could be sentenced for it in Finland. If extradition is requested for the execution of a penalty, it may be granted only if the penalty does not essentially differ from what could have been sentenced for a similar crime in Finland.

Extradition must not be granted unless the crime in question is of the kind or, if committed in similar circumstances in Finland, could be regarded as such a crime for which the penalty under Finnish law could be more severe than one year of imprisonment. If a person is convicted of such a crime in a foreign State, extradition may be granted only if the penalty not yet suffered comprises at least four months' loss of liberty. If the request for extradition concerns several criminal acts, and the conditions exist for the extradition for one of these acts, the request may be granted also for those of the other acts which are punishable under Finnish law. What is said above of the conditions related to the crime, is not applicable to crimes concerning counterfeiting governed by international agreements.

Furthermore, extradition must not be granted for military crimes. However, if such a criminal act at the same time comprises an offence for which extradition is permissible, extradition may be granted for that offence. Similarly, extradition must not be granted for political crimes but, if such a criminal act at the same time comprises an offence which is not of political nature, and the offence, as a whole, cannot be regarded primarily as a political crime, extradition may be granted on the condition that the person requested must not be accused of a political crime.

As a general rule, extradition must not be granted if it is to be feared that the person concerned may become the object of persecution threatening his life or liberty or otherwise because of his race, nationality, religion, political opinions or belonging to a certain social group or due to political circumstances. Nor must extradition be granted if, for humanistic reasons, it would be unreasonable, taking into consideration the age, health or other personal circumstances of the person concerned.

A request for extradition must be based either on such an executable sentence by which the person concerned has been found, on the ground of evidence regarded to be sufficient, guilty of the crime in question, or on such a warrant for arrest issued by an appropriate authority and based upon evidence proving the probable guilt of the person. By an agreement made with a foreign State, there may be prescribed that an executable sentence or a warrant for arrest issued by a court or a judge may be accepted as such on the part of that State as a valid ground for extradition.

If a person has already been convicted in Finland of the crime for which extradition is requested, or if the right to indict a person or to execute a penalty has to be considered, under Finnish law, as having already been dropped, extradition must not be granted. If a person whose extradition is requested is accused in Finland of another crime for which imprisonment may be inflicted, or has to undergo such a penalty sentenced to him, or must otherwise be deprived of his liberty, he must not be extradited as long as such an obstacle exists. Only when there are particularly weighty reasons, may such a person be extradited for the trial concerning the crime in

* Note furnished by Mr. Voitto Saario, government-appointed correspondent, Helsinki.

question, but he has to be returned to Finland immediately after the trial.

When extradition is granted, the following conditions shall be set forth:

(1) The extradited person must not be accused in the receiving State of another crime committed before the extradition without the permission given by the Ministry of Justice, nor be extradited further to a third State, except when he has not left the country in 45 days after having been released, or has returned to the country after having left it;

(2) The extradited person must not, without permission, be accused before a court which has only a temporary jurisdiction over such matters;

(3) A death sentence inflicted upon the extradited person must not be executed.

Even other conditions may be set forth when considered necessary.

The new Act contains detailed provisions concerning the procedure to be followed in extradition cases. One of the safeguards against illegal extradition is the provision according to which the Ministry of Justice, if it does not reject the request for extradition immediately and if the person concerned objects to the request, must obtain the advisory opinion of the Supreme Court before making a decision on the matter. If the opinion is negative, extradition must not be granted. The Ministry of Justice shall also ascertain, through investigation performed by the Central Criminal Police, that the grounds for extradition exist.

(b) Act No. 465, of 7 July 1970, on the Supplement of the Criminal Code by Provisions Concerning Race and Other Discrimination (*AsK* No. 465/70), articles 6 *(a)* and 6 *(b)* in Chapter 16 of the Criminal Code, in connexion with the ratification and bringing into force of the International Convention on the Elimination of All Forms of Racial Discrimination.

According to the first mentioned Article, anyone who is spreading among the public statements or announcements where groups of a certain race, colour, religion, or national or ethnic origin, are threatened or affronted, shall be convicted of incitement to discrimination of a group of persons and subjected to imprisonment for two years at most or to a fine.

According to article 6 *(b)*, anyone engaged in an enterprise or being in the service of such a person or in a comparable position, or any official who in such a capacity does not serve a customer, on the conditions generally applicable, because of his race, colour, religion or national or ethnic origin, shall be convicted of discrimination and subjected to a fine or imprisonment for six months at most. Similarly, anyone organizing a public entertainment or a public meeting or assisting at it, who refuses, on the conditions generally applicable, to let in a person because of his race, colour, religion, or national or ethnic origin, shall be convicted of discrimination as said above.

2. *Right to just and favourable conditions of work*

(a) Act No. 31, of 16 January 1970, on the Working Hours in Farming (*AsK* No. 31/70) regulates the working hours for those engaged in farming or its subordinate sources of livelihood. The Act concerns only employees who are working under the direction and supervision of an employer and for his account against remuneration. The Act does not concern (i) temporary work lasting at most six days, (ii) work against piece wages, the employee being entitled to determine his own working and rest hours, or (iii) reindeer breeding. Furthermore, the Act is not applied to persons who are related to the employer and permanently live with him in his household, nor to persons who are in a leading position in the enterprise, nor to domestic helps who do not participate in the farming work.

If there is any doubt as to whether a certain work is governed by this Act, the matter shall be decided by the Labour Council upon the request of one of the concerned parties or of a labour organization or trade inspector or public prosecutor.

According to this Act, the maximum number of working hours may be nine hours a day and 45 hours a week. Weekly working hours may be arranged in a flexible way so that the average number of working hours is 45, provided that there is a working hour system made in advance for the work in question for a period of 12 months at most.

When there are more than seven working hours in a day, the employees must have at least one hour's rest during the work. On Sundays or, if it is not possible, at some other time during the week, the employees must be given a weekly rest of at least thirty-four hours without interruption.

In emergency cases, working hours may be prolonged to the extent that is absolutely necessary. For such work, as well as for other overtime work, the wages shall be increased by 50 per cent for the first two hours and by 100 per cent for the following hours. For work done on Sunday or on religious holidays, the wages shall be increased by 100 per cent.

The observance of the provisions of this Act is supervised by labour inspectors. For breaches of these provisions, the appropriate public prosecutor shall indict before the court.

(b) Act No. 320, of 30 April 1970, on Labour Contract (*AsK* No. 320/70) replaces the previous Act on the same subject of 1 June 1922 taking into account the development which has taken place in this field since the enactment of the previous Act as well as the international agreements in force.

The legal character of labour contract remains the same as before, but the rights and obligations of employers and employees have been defined in greater detail than before. Certain reform pro-

visions contained in the new Act have a particular interest from the point of view of human rights. Thus, employers are compelled to observe in all labour contracts and labour relations the wage terms and other conditions confirmed by collective bargaining for the work in question to be applied in the whole country. If a labour contract is in contradiction with such terms or conditions, the contract is null and void in the deviating parts, and instead of them the general terms and conditions shall be applied. As a general rule, it is provided that employers must treat their employees impartially so that no one is put into an inferior position compared to others on the ground of birth, religion, sex, age, political or trade union activities or other such things. Furthermore, employers must see to it that safety at work is maintained and observe all what is reasonably necessary in order to protect employees against accidents and detriment to their health, by taking into consideration their age, sex, skill and other conditions.

3. *Right to protection against unemployment*

Act No. 169, of 6 March 1970, on Discharge Payment (*AsK* No. 169/70) establishes a new institution in order to diminish the harmful effects of unemployment. According to it, a special discharge payment will be granted to an employee whose employment has ended because the employer has terminated his enterprise or reduced its function owing to economic or productive circumstances, provided that it is difficult for the employee to find work because of his age or other reasons.

For the management of this system, a special discharge fund has been established. The Ministry of Social Affairs and Public Health supervises its function and lays down its statutes. The Ministry also appoints the members of the Board of the fund on the proposal of the central organizations of employers and employees.

The statutes of the fund will contain provisions on the exact conditions for the payment as well as on its amount. The length of the terminated labour relation shall be taken into account in the determination of the amount of the payment.

4. *Right to health*

Act No. 239, of 24 March 1970, on Abortion (*AsK* No. 239/70) regulates the conditions for legal abortion. According to it, abortion may be performed in the following circumstances:

(1) When the continuance of pregnancy or the giving birth to a child would endanger the life or health of the mother because of an illness, defect or weakness of hers;

(2) When the giving birth to a child would mean a considerable burden for the mother, taking into account her own or her family's living conditions and other circumstances;

(3) When the expectant mother has become pregnant in a criminal way, such as rape;

(4) When the expectant mother, at the moment she became pregnant, had not reached the age of 17 years or had reached the age of 40 years or had already given birth to at least four children;

(5) When there is reason to presume that the child would be mentally defective or seriously ill or physically defective;

(6) When illness or the disturbed mental condition of one or both parents, or any other similar disability or another reason comparable to it seriously restricts their ability to take care of the child.

The Act contains detailed provisions concerning the way in which the conditions for abortion must be ascertained and how the decisions concerning its performance must be made.

5. *Right to education*

Act No. 40, of 16 January 1970, on State Guarantee and Interest Subsidy for Study Loans of Persons Carrying on Studies in Trade Schools or Courses (*AsK* No. 40/70) provides that in order to improve the economic possibilities of those Finnish citizens who carry on studies in trade schools or courses under public supervision for at least eight months a year, a State guarantee may be granted upon request for a loan taken by such a person. In addition, for those who carry on studies in certain trade institutions of higher level, a State subsidy may be granted for the payment of interest on their loans. The subsidy may be at most 4 per cent a year of the loan concerned.

A State guarantee and interest subsidy may be granted to a student for at most four years' study. When a student has shown particular success in his examination, his loan may be paid from the State funds either totally or in part.

Decisions on measures provided for by this Act are made by the State Study Support Centre, a special organ for this purpose.

II. International agreements

1. Decree No. 273, of 10 April 1970, brings into force in Finland the Agreement among Finland, Denmark, Norway and Sweden concerning the Nordic Institute for Community Planning, done at Stockholm on 24 September 1969 (*AsK* No. 273/70).

2. Decree No. 274, of 10 April 1970, brings into force in Finland the Agreement on Economic, Industrial and Technical Co-operation between the Republic of Finland and the Hungarian People's Republic, done at Budapest on 1 October 1969 (*AsK* No. 274/70).

3. Decree No. 515, of 15 July 1970, brings into force in Finland the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as revised at Stockholm on 14

July 1967 concerning articles 22 to 38 (*AsK* No. 515/70).

4. Decree No. 516, of 15 July 1970, brings into force in Finland the Convention Establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967 (*AsK* No. 516/70).

5. Decree No. 517, of 15 July 1970, brings into force in Finland the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Stockholm on 14 July 1967 concerning articles 13 to 30 (*AsK* No. 517/70).

6. Decree No. 544, of 5 August 1970, brings into force in Finland the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (*AsK* No. 544/70).

7. Decree No. 617, of 25 September 1970, brings into force in Finland the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, done at the cities of London, Moscow and Washington on 22 April 1968 (*AsK* No. 617/70).

8. Decree No. 618, of 23 September 1970, brings into force in Finland the Agreement on the Planning of the Joint Agricultural Project in Tanzania between the Governments of Denmark, Finland, Norway and Sweden and the Government of the United Republic of Tanzania regarding staff assistance for the planning of joint Nordic-Tanzanian activities in the field of agriculture (*AsK* No. 618/70).

GABON

ACT No. 11/69 OF 31 DECEMBER 1969 AMENDING ACT No. 9/63 OF 12 JANUARY 1963 ON THE MAINTENANCE OBLIGATIONS OF THE FATHER OF A CHILD BORN OUT OF WEDLOCK[1]

Art. 1. Article 4 of Act No. 9/63 of 12 January 1963 on the maintenance obligations of the father of a child born out of wedlock shall be amended as follows:

The action shall be brought before the court of main instance of the place of residence of the mother or of the person having effective charge of the child. Under penalty of inadmissibility, the action must be brought during the three years following the birth of the child, or, if the mother and the alleged father have lived in concubinage or if the alleged father has contributed for a time to the maintenance of the child, in the three years following the termination of either the concubinage or such contribution.

Art. 2. The provisions of this Act shall not be applicable to actions already brought before the courts on the date of its promulgation.

[1] *Journal officiel de la République gabonaise*, No. 6, of 1 March 1970. For extracts from Act No. 9/63, see *Yearbook on Human Rights for 1963*, p. 131.

ORDINANCE No. 9/70 OF 14 FEBRUARY 1970 AMENDING THE PENAL CODE[2]

Art. 1. Chapter 18 *bis* of Act No. 21/63 of 31 May 1963 establishing the Penal Code shall be amended as follows:

Art. 209 bis. Any person found in a state of obvious drunkenness in a street, road, square, café, bar or other public place shall be arrested immediately and handed over to the *Procureur de la République* for indictment before the correctional court in accordance with the procedure applicable to *flagrante delicto*.

He shall be punishable by imprisonment for not less than one month or more than one year and by a fine of not less than 25,000 or more than 100,000 francs or by both of these penalties.

If the offence is repeated, the offender may, in accordance with the provisions of article 19, be deprived of all or some of the rights specified in article 18. He may also forfeit parental control and, in that case, the family allowances shall be paid to the person who has been awarded custody of the children.

The court may also, if the offence is repeated, temporarily prohibit the offender from exercising his profession or occupation whenever such exercise may seriously endanger the health or the fundamental rights of citizens. Such a prohibition, which for a period of not more than two months, may become permanent after the fourth conviction. Upon his second conviction, the court may also decide to suspend his driving licence for not more than six months.

Art. 209 bis. (1) Café-owners, bartenders and other vendors of alcoholic beverages shall be punishable by imprisonment for not less than one month or more than one year and by a fine of not less than 20,000 or more than 200,000 francs or by both of these penalties if they serve such beverages to persons who are obviously intoxicated or receive in their establishments or serve spirits or alcoholic beverages to minors under 18 years of age.

In the latter case, the vendor may be given an opportunity to prove that he was misled concerning the age of the minor, in which case no penalty shall be imposed on him.

Art. 209 bis. (2) Any person who employs women under 18 years of age, who are not members of his own family in an establishment where alcoholic beverages are consumed on the premises shall be punishable by the penalties specified in the preceding article.

Art. 209 bis. (3) In the cases provided for in the two preceding articles, the offender may be deprived, in accordance with the provisions of article 19, of the rights specified in article 18, and the court may order the closure of the establishment for not less than 10 days or more than two months. If the offence is repeated, it may order the establishment to be closed down.

[2] *Ibid.*, No. 9, of 15 March 1970.

ACT No. 6/70 ON CONDITIONAL RELEASE[3]

Art. 1. Any person who has received a sentence involving deprivation of liberty for six months or more which has become final shall be eligible for conditional release if, by his good conduct while under detention, he has given unequivocal proof of his reform.

Art. 2. An application for conditional release may be made when the convicted person has served half of the period of his actual detention, allowing for any remissions of sentence he may have been granted.

However, recidivists must have served six months of a prison term of less than nine months and two thirds of a term of more than nine months.

A conditional release may not be granted in cases where judgement is to be followed by relegation.

Art. 3. The release may be revoked if the released prisoner is guilty of duly attested habitual and notorious misconduct, or if he fails to abide by any of the conditions specified in the order for his release.

A release shall be revoked if the individual concerned receives a fresh sentence prior to the time when his prison term would normally expire.

A release shall become final if it is not revoked before the expiry of the term to which the individual concerned was sentenced.

Art. 4. Orders for conditional release shall be issued by the President of the Republic on the recommendation of the Administrator of the penal institution concerned, the Prefect, the prison supervisory authority, the *parquet* of the tribunal or court which sentenced the prisoner and the Minister of the Interior.

Decisions revoking orders for conditional release shall be taken by the Minister of the Interior on the recommendation of the Prefect and the Public Prosecutor of the place of residence of the released prisoner.

Art. 5. The administrative or judicial authority of any place where a prisoner who has been conditionally released may be found may order his provisional arrest provided that notice of the arrest is given within 48 hours to the Minister of the Interior who shall revoke the order for conditional release if there is reason to do so. The revocation shall take effect as from the day on which the released prisoner was arrested.

Art. 6. When he returns to prison, he shall serve in its entirety that portion of his sentence which had not been served at the time of his release.

Art. 7. An application for conditional release, whether made by the prisoner or by another person, shall be submitted to the Administrator of the penal institution concerned, who shall attach to it a copy of the judgement or the sentence and of the entry in the prison register, a statement of any disciplinary action taken against the prisoner while under detention and a certificate attesting to the prisoner's stay in the prison.

Those papers, together with the Administrator's observations, shall be forwarded successively to the authorities referred to in the first paragraph of article 4.

Art. 8. A prisoner who is conditionally released shall be given papers (a booklet) containing full particulars of his identity, the date of the judgement or sentence, the date of his conditional release, and the date when his release will become final.

He must have his papers stamped every month at the police station of the district in which he has his residence or at the office of the commandant of the brigade or detachment of the *gendarmerie* for that district if there is no police station.

Art. 9. Failure to comply with the provisions of the preceding paragraph may result in the revocation of the conditional release.

[3] *Ibid.*, No. 19 of 15 August 1970.

THE GAMBIA

THE CONSTITUTION OF THE REPUBLIC OF THE GAMBIA

Act No. 1 of 1970, assented to and entered into force on 24 April 1970*

CHAPTER II

Citizenship

3. (1) Every person who, having been born in The Gambia, is on 17th February, 1965 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of The Gambia on 18th February, 1965:

Provided that a person shall not become a citizen of The Gambia by virtue of this subsection if:

(a) Neither of his parents nor any of his grandparents was born in The Gambia; or

(b) Neither of his parents was naturalized in The Gambia as a British subject under the British Nationality Act, 1948, or before that Act came into force.

(2) Every person who, on 17th February, 1965, is a citizen of the United Kingdom and Colonies:

(a) Having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised in The Gambia as a British subject before that Act came into force; or

(b) Having become such a citizen by virtue of his having been naturalised or registered in The Gambia under that Act, shall become a citizen of The Gambia on 18th February 1965.

(3) Every person who, having been born outside The Gambia, is on 17th February 1965 a citizen of the United Kingdom and Colonies or a British protected person, shall, if his father becomes, or would but for his death have become a citizen of The Gambia by virtue of subsection (1) or subsection (2) of this section, become a citizen of The Gambia on 18th February 1965.

4. (1) Any person who, but for the proviso to subsection (1) of section 3 of this Constitution, would be a citizen of The Gambia by virtue of that subsection shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia;

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) Any woman who, on 17th February 1965, has been married to a person:

(a) Who becomes a citizen of The Gambia by virtue of section 3 of this Constitution; or

(b) Who, having died before 18th February 1965, would, but for his death, have become a citizen of The Gambia by virtue of that section

but whose marriage has been terminated by death or dissolution before 18th February 1965 shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(3) Any woman who, on 17th February 1965, has been married to a person who becomes; or would but for his death have become, entitled to be registered as a citizen of The Gambia under subsection (1) of this section but whose marriage has been terminated by death or dissolution before 18th February 1965 or is so terminated on or after that date but before 18th February 1967 and before that person exercises his right to be registered as a citizen of The Gambia under subsection (1) of this section, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

(4) In this section "the specified date" means:

(a) In relation to a person to whom subsection (1) of this section refers, 18th February 1967; and

(b) In relation to a woman to whom subsection (3) of this section refers, 18th February 1967 or the expiration of a period of two years commencing with the termination of her marriage (whichever is the later),

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

* Text furnished by the Government of The Gambia.

5. Every person born in The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth:

Provided that a person shall not become a citizen of The Gambia by virtue of this section if at the time of his birth:

(a) Neither of his parents is a citizen of The Gambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to The Gambia; or

(b) His father is a citizen of a country with which The Gambia is at war and the birth occurs in a place then under occupation by that country.

6. A person born outside The Gambia after 17th February 1965 shall become a citizen of The Gambia at the date of his birth if, at that date, his father is a citizen of The Gambia otherwise than by virtue of this section or section 3 (3) of this Constitution.

7. Any woman who is married to a citizen of The Gambia or who has been married to a man who was, during the subsistence of the marriage, a citizen of The Gambia shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of The Gambia.

...

9. (1) Parliament may make provision for the acquisition of citizenship of The Gambia by persons who are not eligible or who are no longer eligible to become citizens of The Gambia under the provisions of this Chapter.

(2) Parliament may make provision authorising the Minister to deprive of his citizenship of The Gambia any person who is a citizen of The Gambia otherwise than by virtue of section 3, section 5 or section 6 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of The Gambia.

10. (1) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 acquired by registration, naturalisation or other voluntary and formal act (other than marriage) the citizenship of any country other than The Gambia, the Minister may by order deprive that person of his citizenship.

(2) If the Minister is satisfied that any citizen of The Gambia has at any time after 17th February 1965 voluntarily claimed and exercised in a country other than The Gambia any rights available to him under the law of that country, being rights accorded exclusively to its citizens, the Minister may by order deprive that person of his citizenship.

...

12. ...

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 18th February 1965 and the birth occurred after 17th February 1965 the national status that the father would have had if he had died on 18th February 1965 shall be deemed to be his national status at the time of his death.

CHAPTER III

Protection of fundamental rights and freedoms

13. Whereas every person in The Gambia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

14. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

15. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:

(a) In execution of the sentence or order of a court, whether established for The Gambia or some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of the order of the Supreme Court or the Court of Appeal punishing him for contempt of that court or of another court or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia;

(f) Under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into The Gambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from The Gambia or for the purpose of restricting that person while he is being conveyed through The Gambia in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Gambia, 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 with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of The Gambia in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of The Gambia;

and who is not released, shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in 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 or from any other person or authority on whose behalf that other person was acting.

16. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) Any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

17. (1) No person shall be subjected to torture or inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in The Gambia on 23rd April, 1970.

18. (1) No property of any description shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia except by or under the provisions of a law that:

(a) Requires the payment of adequate compensation therefor; and

(b) Gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation of the Supreme Court.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section:

(a) To the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right:

(i) In satisfaction of any tax, rate or due;

(ii) By way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of The Gambia;

(iii) As an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) In the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) In circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) In consequence of any law with respect to the limitation of actions; or

(vii) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required and has without reasonable excuse refused or failed to carry out), and except so far as that provision or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) To the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or a right over property) that is to say:

(i) Enemy property;

(ii) Property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) Property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) Property subject to a trust for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition 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 Parliament.

(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property of any description and the compulsory acquisition of rights over and interests in such property by or on behalf of the Republic.

19. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any property for a purpose beneficial to the community;

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(c) That authorises an officer or agent of the Government of The Gambia, 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

(d) That authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, to search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(a) May by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) May by law be empowered or required to do in the interests of defence, public safety or public order.

. . .

21. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if

that instruction, ceremony or observance relates to a religion other than his own.

(3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any places of education which it wholly maintains or in the course of any education which it otherwise provides.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

22. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(c) That imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

23. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) That is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(c) That imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

24. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout The Gambia, the right to reside in any part of The Gambia and immunity from expulsion from The Gambia.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For the imposition of restrictions on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia that are reasonably required in the interests of defence, public safety or public order;

(b) For the imposition of restrictions on the movement or residence within The Gambia or on the right to leave The Gambia of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) For the imposition of restrictions, by order of a court, on the movement or residence within The Gambia of any person or on any person's right to leave The Gambia either in consequence of his

having been found guilty of a criminal offence under the law of The Gambia or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from The Gambia;

(d) For the imposition of restrictions on the freedom of movement of any person who is not a citizen of The Gambia;

(e) For the imposition of restrictions on the acquisition or use by any person of land or other property in The Gambia;

(f) For the imposition of restrictions upon the movement or residence within The Gambia or on the right to leave The Gambia of any public officer;

(g) For the removal of a person from The Gambia to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of The Gambia of which he has been convicted; or

(h) For the imposition of restrictions on the right of any person to leave The Gambia that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3) *(a)* of this section so requests at any time during the period of that restriction not earlier than three months after the order was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of the continuation of that restriction to the authority by whom it was ordered:

Provided that authority, unless it is otherwise provided by law, shall not be obliged to act in accordance with any such recommendations.

25. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision:

(a) For the appropriation of public revenues or other public funds;

(b) With respect to persons who are not citizens of The Gambia;

(c) For the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters which is the personal law of persons of that description;

(d) For the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law; or

(e) Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or any office in a body corporate established by 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 subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 19, 21, 22, 23 and 24 of this Constitution being such a restriction

as is authorised by section 19 (2), section 21 (5), section 22 (2), section 23 (2) or paragraph *(a)* or paragraph *(b)* of section 24 (3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

26. Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 15 or section 25 of this Constitution to the extent that the Act authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in The Gambia during that period.

27. (1) When a person is detained by virtue of any such law as is referred to in section 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 seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the Official Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) Not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are entitled to practise as a barrister or a solicitor in The Gambia;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) At the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) *(d)* or subsection (1) *(e)* of this section shall be construed as entitling a person to legal representation at public expense.

28. (1) If any person alleges that any of the provisions of sections 13 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction:

(a) To hear and determine any application made by any person in pursuance of subsection (1) of this section; 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 sections 13 to 27 (inclusive) of this Constitution:

Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 13 to 27 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the Supreme Court in pursuance of subsection (3) of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 95 of this Constitution to the Court of Appeal or to the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Parliament may confer upon the Supreme Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) 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 on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the Supreme Court).

29. (1) The President may, at any time, by proclamation which shall be published in the *Official Gazette*, declare that:

(a) A state of public emergency exists for the purposes of this Chapter; or

(b) A situation exists which, if it is allowed to continue, may lead to a state of public emergency.

(2) Every declaration made under subsection (1) of this section shall lapse:

(a) In the case of a declaration made when Parliament is sitting, at the expiration of a period of seven days beginning with the date of publication of the declaration; and

(b) In any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of the House of Representatives supported by the votes of two-thirds of all the voting members of the House.

(3) A declaration made under subsection (1) of this section may at any time be revoked by the President by proclamation which shall be published in the *Official Gazette.*

...

30. ...

(3) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 14, 16 and 17 of this Constitution.

(4) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in The Gambia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

...

CHAPTER VI

Parliament

Part I

COMPOSITION OF PARLIAMENT

56. (1) There shall be a Parliament which shall consist of the President and a House of Representatives.

...

57. (1) The House of Representatives shall consist of a Speaker and the following other members, that is to say:

(a) Until Parliament otherwise prescribes, thirty-two members who shall be known as "elected members" and who shall be elected in accordance with the provisions of section 60 of this Constitution;

(b) Four members who shall be known as "Chiefs' representative members" and who shall be elected in accordance with the provisions of section 63 of this Constitution;

(c) The Attorney-General; and

(d) Until Parliament otherwise prescribes, three members who shall be known as "nominated members" and who shall be appointed in accordance with the provisions of section 65 of this Constitution.

(2) Only an elected member or a Chiefs' representative member or the Attorney-General shall be entitled to vote upon any question before the House of Representatives and the elected members, the Chiefs' representative members and the Attorney-General are in this Constitution collectively referred to as "voting members".

58. Subject to the provisions of section 59 of this Constitution, a person shall be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, and shall not be so qualified unless, at the date of his nomination for election or, as the case may be, at the date of his appointment:

(a) He has attained the age of twenty-one years;

(b) He can speak English well enough to take an active part in the proceedings of the House;

(c) In the case of a voting member, he is a citizen of The Gambia and

(d) In the case of an elected member, he is registered in some constituency as a voter in elections of elected members of the House and is not disqualified from voting in such elections.

59. (1) No person shall be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment:

(a) In the case of a voting member, he is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state;

(b) He holds the office of Speaker;

(c) He is, under any law in force in The Gambia, adjudged or otherwise declared to be of unsound mind;

(d) He is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in The Gambia;

(e) He is under a sentence of death imposed on him by a court in The Gambia, or is serving or has within five years of the date of his nomination or appointment completed serving a sentence of imprisonment for a term of or exceeding six months imposed on him by such a court or substituted by competent authority for some

other sentence imposed on him by such a court and has not received a free pardon; or

(f) Subject to such exceptions and limitations as may be prescribed by Parliament, he has any such interest in any such government contract as may be so prescribed.

(2) Parliament may provide that a person shall not be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his nomination for election or, as the case may be, at the date of his appointment, he holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the House or the compilation of any register of voters for the purposes of such an election.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with the election of members of the House of Representatives or is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be nominated for election as a voting member of the House or to be appointed as a nominated member.

(4) No person shall be qualified to be nominated for election or appointed as an elected member of the House of Representatives who, at the date of his nomination for election, is, or is nominated for election as, a Chiefs' representative member; and no person shall be qualified to be nominated for election as a Chiefs' representative member who, at the date of his nomination for election, is, or is nominated for election as, an elected member.

(5) No person shall be qualified to be nominated for election as a voting member of the House of Representatives, who, at the date of his nomination for election, is a nominated member; and no person shall be qualified to be appointed as a nominated member who, at the date of his appointment, is, or is nominated for election as, a voting member or who has, at any time since Parliament was last dissolved, stood as a candidate for election as a voting member but was not elected.

(6) Parliament may provide that, subject to such exceptions and limitations as Parliament may prescribe, a person shall not be qualified to be nominated for election or appointed as a voting member of the House of Representatives or to be appointed as a nominated member if, at the date of his appointment:

(a) He holds or is acting in any office or appointment that may be prescribed by Parliament;

(b) He is a member of any naval, military or air force that may be so prescribed; or

(c) He is a member of any police force.

(7) For the purposes of subsection (1) *(e)* of this section:

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

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

(8) In subsection (1)*(f)* of this section "government contract" means any contract made with the Government of The Gambia or with a department of that Government or with an officer of that Government contracting as such.

60. (1) The Gambia shall . . . be divided into constituencies and each constituency shall elect one elected member to the House of Representatives, in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

(2) The election of elected members of the House of Representatives shall be based upon universal adult suffrage, that is to say:

(a) Every citizen of The Gambia who has attained the age of twenty-one years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections of elected members of the House of Representatives, be entitled to be registered as such a voter under any law in that behalf, and no other person may be so registered; and

(b) Every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of elected members of the House of Representatives, be entitled so to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

(3) In any election of elected members of the House of Representatives the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

. . .

63. (1) The Chiefs' representative members shall be elected by the Head Chiefs from among their own number in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) In any election of the Chiefs' representative members the votes shall be given by ballot in such manner as not to disclose how any particular person votes.

. . .

65. The nominated members shall be appointed by the President.

. . .

GREECE

NOTE[1]

(1) Legislative Decree 494 concerns ratification of the International Convention signed in New York on 7 March 1966, pertaining to "The Elimination of all forms of Racial Discrimination".

By virtue of this Legislative Decree the above Convention is part of Greek law.

(2) Legislative Decree 743 sets down the penalty for violation of the law pertaining to narcotics and substances inducive to drug addiction and deals with the treatment of the drug addict in general.

This Legislative Decree aims at protecting the physical and psychological health of the individual. It contains the definition of a great number of narcotic substances and forbids under very heavy penalty not only their use but also their mere possession.

(3) Legislative Decree 790/1970 refers to the amendment of various articles of the Criminal Code and the Code of Criminal Procedure.

It empowers the Courts in cases where the sentence is of incarceration not exceeding the period of one year, to allow the accused the option of a fine provided that this would be deemed as sufficient in deterring the accused from committing another crime.

(4) Legislative Decree 792 concerns the privilege of the inviolability of private correspondence.

This Decree makes detailed provision of what has been set out under Article 15 of the Constitution.[2]

(5) Legislative Decree 794 concerns public meetings. It elaborates further this right of the individual set down in Article 18 of the Constitution.

(6) Legislative Decree 795 concerns the formation of associations and unions.

It elaborates in detail this right of the individual as provided for in Article 19 of the Constitution.

(7) Legislative Decree 796 concerns the exercise of the right of the individual to submit petitions to the State Authorities as provided in Article 20 of the Constitution, and the corresponding duty of the Authorities to provide promptly a written and reasoned reply to the petitioner.

(8) Legislative Decree 797 concerns compulsory expropriation.

Article 21 of the Constitution sets forth that no one shall be deprived of his property except for duly proved public expediency, as the law provides, and after full compensation.

This Decree provides the procedural means available to individuals for submitting requests for compensation in case of property expropriation.

(9) Finally, Legislative Decree 803 pertains to the functions of the Constitutional Court which is the highest authority empowered by the law to question the strict application of the provisions of the Constitution.

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[1] Note furnished by the Government of Greece.

[2] For extracts from the Constitution, see *Yearbook on Human Rights for 1968*, pp. 156-163.

GUATEMALA

FREEDOM OF MOVEMENT AND RESIDENCE

DECREE No. 4-70 OF 29 JANUARY 1970[1]

Art. 1. Approval is hereby given to the Agreement made by an exchange of notes between the Guatemalan Ministry of Foreign Affairs and the Embassy of Italy accredited in Guatemala, dated 12 August 1969, permitting nationals of Italy and Guatemala to enter, stay in and depart from the territory of the other country without requiring a visa.

Art. 2. This Decree was approved by an absolute majority of the deputies in Congress and shall enter into force on the day following its publication in the *Diario Oficial.*

[1] *El Guatemalteco,* No. 83, Vol. CLXXXVII, of 19 February 1970.

ACT CONCERNING CATEGORIES OF CIVIL SERVICE PENSIONS

Promulgated by Decree No. 28-70 of 22 May 1970[2]

CHAPTER I

Pensions

Art. 1. This Act shall regulate the pensions receivable by civil servants referred to in articles 5, 6 and 7 of the Constitution of the Republic[3] who are performing or have performed service in the legislature, the executive or the judiciary or by the dependants of such civil servants.

Art. 2. Civil servants shall receive the protection and benefits provided for in this Act in any of the following circumstances:

1. Retirement from service;
2. Disability;
3. Death.

The State shall provide the following benefits:

1. A retirement pension;
2. A disability pension;
3. A widow's pension;
4. An orphan's pension;
5. A special pension for the contributor's parents.

...

[2] *Ibid.,* No. 65, Vol. CLXXXVIII, of 2 June 1970.

[3] For extracts from the Constitution, see *Yearbook on Human Rights for 1965,* pp. 126-136.

AMENDMENTS TO THE PENAL CODE

LEGISLATIVE DECREE No. 2164

Promulgated by Decree No. 51-70 of 5 August 1970[4]

Art. 1. Article 156 shall read as follows:

Art. 156. Anyone causing a commotion or a serious disturbance of order during court proceedings, in the public business of any authority or corporation, in a public office or establishment or at a place of entertainment or a meeting shall be liable to one year's correctional imprisonment. When such actions lead to public unrest or anxiety or jeopardize the security of individuals or bodies corporate or of their property, they shall be punishable by two years' correctional imprisonment.

Art. 2. Article 158 shall be amended to read as follows:

Art. 158. Anyone uttering shouts tending to stir rebellion or sedition at any meeting or assembly or in a public place or exhibiting at such meetings, assemblies or public places slogans or banners which constitute a direct incitement to a breach of public order shall be liable to six months' detention *(arresto mayor)*.

Art. 3. Article 159 shall read as follows:

Art. 159. Anyone removing an inmate from a house of detention or penal institution or helping him to escape shall be liable to 15 months' correctional imprisonment; if violence or bribery is used, the penalty shall be two years' correctional imprisonment.

If the escape takes place at a point outside the house of detention or penal institution, the penalty shall be increased by one-third.

Art. 4. Article 206 shall read as follows:

Art. 206. Anyone forging a passport or identity card shall be liable to two years' correctional imprisonment.

Art. 5. Article 208 shall read as follows:

Art. 208. Anyone using a passport or identity card of the kind referred to in article 206 shall be liable to two years' correctional imprisonment. Anyone using a genuine passport or identity card made out to another person shall incur the same penalty.

...

Art. 7. Article 259 shall read as follows:

Art. 259. Public officials or employees who fail to give due co-operation in the administration of justice or other public service when called upon to do so by a competent authority shall be liable to 15 months' correctional imprisonment. If such failure to co-operate results in serious harm to the public weal or to a third party, they shall be liable to two years' correctional imprisonment; in either event, they shall be subject to absolute disqualification *(inhabilitación absoluta)* for the period of their sentence.

Art. 8. Article 271 shall read as follows:

Art. 271. The following shall be liable to three years' correctional imprisonment or to absolute disqualification for a similar period:

1. Public officials or employees who unlawfully or when manifestly not competent to do so order or carry out the arrest of a person;

2. Judges who fail to discharge prisoners when required to do so;

3. Governors, heads or wardens of penal institutions or houses of detention who admit a person as a prisoner or detainee without observing the statutory requirements;

4. Governors, heads or wardens of penal institutions or houses of detention or other public officials or employees concealing a prisoner who should be presented to the authorities;

5. Public officials or employees who fail to execute immediately and in the appropriate manner a release order issued by a competent authority or who hold in a penal institution a prisoner who has completed his sentence;

6. Public officials or employees who hold prisoners in places not authorized for that purpose.

...

Art. 10. Article 276 shall read as follows:

Art. 276. Public officials or employees who, in the course of their duties, molest a person in any way or use unlawful or unnecessary compulsion in performing an official act shall be liable to one year's correctional imprisonment.

Any public official or employee in the administrative category who delays in providing or who fails to provide individuals with protection or service which under the laws or regulations he is required to provide shall be liable to one year's correctional imprisoment.

Art. 11. Article 281 shall read as follows:

Art. 281. When the purpose of a gift received or promised is to induce a public official or employee to refrain from performing an act required of him in the discharge of his duties, the penalty shall be one year's correctional imprisonment.

[4] *Ibid.*, No. 22, Vol. CLXXXIX, of 8 August 1970.

Art. 12. Article 285 shall read as follows:

Art. 285. Anyone who, by means of gifts, presents, offers or promises, bribes or seeks to bribe public officials or employees shall be liable to the same penalties, with the exception of disqualification, as officials or employees who accept bribes.

Art. 13. The following new article shall be inserted after article 287:

Art. 287. A. Any public official or employee, authority or agent of same who uses the powers conferred on him by law to coerce individuals for purposes of profit or other gain shall be liable to three years' correctional imprisonment.

The above-mentioned penalty shall be increased by two-thirds where the person concerned is a public official or employee whose duty is to combat crime, punish offenders or see to the maintenance of public order.

Art. 14. Article 303 shall be deleted.

Art. 15. Article 304, paragraph 3, shall be amended to read as follows:

3. Two years' correctional imprisonment if the woman consented thereto.

Art. 16. Article 305 shall read as follows:

Art. 305. A pregnant woman who induces an abortion or permits another person to perform an abortion on her shall be liable to one year's detention.

If the pregnancy occurred as a result of rape, she shall be liable to six months' detention.

Art. 17. Article 307 shall read as follows:

Art. 307. A pharmacist or other person who without the required doctor's prescription issues an abortifacient shall be liable to six months' detention.

Art. 18. Article 330 shall read as follows:

Art. 330. Intercourse with a woman in any of the following circumstances shall be held to constitute rape:

1. When force or intimidation is used;

2. When the woman is for some reason not in possession of her rational faculties;

3. When, although none of the above-mentioned circumstances obtain, the woman is less than 12 years of age.

Anyone committing rape in the circumstances specified in paragraphs 1 and 2 of this article shall be liable to eight years' correctional imprisonment.

If, in the case specified in paragraph 3, the woman is between 10 and 12 years of age, the offender shall be liable to 15 years' correctional imprisonment.

If the woman in question is less than 10 years of age, the offence shall be punishable by death.

Art. 19. Article 331 shall read as follows:

Art. 331. Anyone who commits an indecent assault against a person of the same or the opposite sex in any of the circumstances specified in the preceding article shall be liable to four years' correctional imprisonment.

An indecent assault committed against a boy or girl under 10 years of age shall be punishable by eight years' correctional imprisonment.

Art. 20. Article 332 shall read as follows:

Art. 332. Any person vested with public authority, priest, servant, domestic, guardian, teacher or other person having sexual relations with a girl more than 12 and less than 18 years of age with whose upbringing or guardianship he has been entrusted shall be liable to one year's correctional imprisonment.

Anyone having sexual relations with his sister or descendant, even if she is of full age, shall be liable to the same penalty.

Any other person who, by means of deceit, procures intercourse with a woman more than 12 and less than 18 years of age shall be liable to six months' detention.

The same penalty shall apply to any other sexual offence committed against a person of the same sex by the same persons and in the same circumstances.

Art. 22. The last paragraph in article 367 shall be deleted, and the article shall read as follows:

Art. 367. Any individual who deprives another person of his liberty by imprisoning or detaining him shall be liable to five years' correctional imprisonment.

Anyone providing premises for the commission of such offence shall be liable to the same penalty.

Art. 23. Article 368 shall read as follows:

Art. 368. The offence referred to in the preceding article shall be punishable by 15 years' correctional imprisonment:

1. If the imprisonment or detention is of more than 30 days' duration;

2. If the imprisonment or detention is perpetrated under the guise of being the act of a public authority;

3. If violence or grave threats are used either before or during the imprisonment or detention;

4. If the detained or kidnapped person is assaulted, molested, tortured or otherwise harmed either physically or mentally;

5. If the offence is committed for subversive purposes either by members of subversive groups of by persons maintaining an illegal existence.

Art. 24. Article 369 shall read as follows:

Art. 369. Kidnapping carried out with the aim of obtaining a ransom or arranging an exchange for third parties or for some other purpose shall be punishable by 15 years' correctional imprisonment.

If the kidnapping referred to in the preceding paragraph is carried out by two or more persons, the offenders shall be liable to 20 years' correctional imprisonment.

If, as a result of the kidnapping referred to in the two preceding paragraphs, the kidnapped person suffers mental impairment, the offenders shall be liable to an additional penalty of eight years, without prejudice to the penalties arising from any bodily harm done to the victim.

Kidnapping shall be punishable by death if it results in the death of the kidnapped person from whatever cause.

Art. 25. Article 377 shall read as follows:

Art. 377. An individual who enters the residence of another person on false pretences or against the manifest wishes of that person shall be liable to two years' correctional imprisonment.

If entry is effected by means of violence or intimidation, the penalty shall be three years' correctional imprisonment. Anyone who remains in such a place without the authorization of the person qualified to give it or who stays there by means of concealment or on false pretences shall be liable to eight months' detention.

Art. 29. Article 382 shall read as follows:

Art. 382. Anyone who without proper authority prevents another person from doing something not prohibited by law or forces him to do or agree to something, whether rightful or wrongful, against his will shall be liable to six months' detention. If violence is perpetrated against the person concerned, the penalty shall be one year's correctional imprisonment.

...

ACT CONCERNING THE ESTABLISHMENT AND FUNCTIONING OF RECREATION CENTRES FOR STATE EMPLOYEES[5]

CHAPTER I

Purpose and establishment of the centres

Art. 1. The promotion and development of national programmes in respect of recreation centres for employees of the State and of decentralized autonomous and semi-autonomous State agencies is hereby declared to be in the common interest and of benefit to society.

Art. 2. The organization of recreation programmes for employees of the State and of decentralized autonomous and semi-autonomous State agencies shall be the responsibility of the Ministry of Labour and Social Security, which shall co-ordinate its activities in this field with the National Civil Service Office in accordance with such policy as the Government of the Republic may adopt on the matter.

Art. 3. There shall be established a fund for financing recreation programmes for employees of the State and of decentralized autonomous and semi-autonomous State agencies whose resources shall be derived from employee and State contributions and other revenues provided for in this Act.

CHAPTER II

Aims

Art. 4. The fund referred to in the preceding article shall be established with the aim of financing the recreation programmes for employees of the State and of decentralized autonomous and semi-autonomous State agencies in order to ensure the satisfactory organization of recreational facilities for the said employees so that they may take better advantage of their leisure.

The said fund shall also have the following aims:

(a) To establish and finance clubs, places of public entertainment and social and sports facilities;

(b) To foster the dissemination of culture and art through the programmes of the Department of Social Security, pursuant to such decisions as the relevant Ministry may adopt for the purpose;

(c) To promote employees' activities in the sphere of physical, moral and intellectual education;

(d) To promote all other kinds of recreational activities for employees.

CHAPTER III

Organization

Art. 5. For purposes of the planning and scheduling of recreational activities, the Ministry of Labour and Social Security shall establish appropriate regulations and such provisions as may be necessary in consultation with the National Civil Service Office.

...

[5] *Ibid.*, No. 98, Vol. CLXXXIX, of 19 November 1970.

HUNGARY

NOTE*

ACT V of 1968 on Control by the People

Under this Act, People's Control is a central State organ of nationwide jurisdiction, which discharges its tasks by enlisting the organized and direct participation of broad strata of the working people in the exercise of control. The duty of People's Control is to supervise the realization of the objectives relating to the economic, social, sanitary and cultural development of the country, the implementation of the tasks of direct concern to the living conditions of the population.

Act VI of 1969 on Vocational Training

The training of skilled workers is a duty of the State; vocational training schools may be established and maintained by ministries, ministerial agencies or, in concert with them, by the council of the capital and the councils of counties and towns of county rank.

Law-Decree No. 41 on the Hungarian Academy of Sciences

Pursuant to the Law-Decree, the Hungarian Academy of Sciences is supreme scientific body of the Hungarian People's Republic. The Academy takes part in the guidance of scientific research on a national level and promotes the fostering of sciences by providing the necessary means for the scientific and technical staff of its institutes to carry on research work.

*Note furnished by the Government of the Hungarian People's Republic.

Law-Decree No. 8 of 1969 on the Promulgation of the International Convention on the Elimination of All Forms of Racial Discrimination adopted at New York on 21 December 1965

Act III of 1969 on Copyright

The objective of this regulation is to protect the literary, scientific and artistic productions as well as the work of performing artists and other performances related with the creative work of authors, and to support the institutions whose task is to encourage creative activities and to promote the social uses of authors' works.

Act III of 1970 amending Act III of 1966 on the Election of Members of Parliament and Members of Councils

Pursuant to the Act, the members of Parliament as well as the members of city, Budapest, town district, and municipal councils shall be elected by the voters on the basis of universal and equal suffrage through direct vote by secret ballot and by constituencies.

Government Decision No. 1013/1970 on the Improvement of the Economic and Social Status of Women

The decision summarizes the pertinent responsibilities of various State organs and institutions, enterprises and co-operatives. Accordingly the said bodies shall ensure that for equal work women get equal pay with men, and that women of appropriate abilities are admitted in a reasonable number to vocational extension training. The decision lays down directives to govern the filling of leading posts and to ease the household chores of working women and the situation of large families, providing at the same time for the health protection of women.

IRAQ

HUMAN RIGHTS AND IRAQI LAWS*

The Constitution

Chapter II of the Interim Constitution of the Republic of Iraq refers to the social and economic foundations of the Republic, stating that social solidarity is the primary basis of Iraqi society (article 10), that the family is the nucleus of society and that the State insures the protection of the family and the protection of mother and child (article 11).

The Constitution also insures the inviolability of private ownership and the economic freedom of individuals within the limits of the law, provided that these private rights do not conflict with and are not detrimental to the planning of public economy (article 16, paragraph B). Private property shall not be expropriated except in the public interest and with equitable compensation in accordance with provisions prescribed by law (article 16, paragraph C). The Constitution also stipulates that the maximum limit of agricultural land ownership shall be determined by law and the rest of the land shall be considered public property (article 16, paragraph D).

Chapter III of the Constitution sets forth the basic rights and obligations of citizens with a view to consolidating the principles of human rights. Thus, article 19, paragraph *a* stipulates that the law regards all citizens as equals without distinctions of sex, race, language, social origin or religion. Article 16, paragraph *b* stipulates that all citizens shall have equal opportunities within the limits of the law.

With regard to the right of the individual to a legal trial, the Constitution stipulates that the accused is innocent until he is proved guilty in a legal trial (article 20, paragraph *a*), that the right of defense is inviolable in all phases of investigation and trial in accordance with the law (article 20, paragraph *c*), that court sessions shall be public unless it is decided by the Court to hold closed sessions (article 20, paragraph *c*). Article 21, paragraph *a* stipulates that penalty is personal. Paragraph *b* of the same article stipulates that there can be no crime and no punishment except as defined by law, and that penalties may only be imposed in respect of acts prescribed as felonies by law at the date on which they were committed, and that no stronger penalties shall be imposed than those which were in force at the time at which the act was committed.

Article 22 states that the dignity of human beings is safeguarded and that all kinds of physical or mental torture are prohibited (paragraph *a*). The article also stipulates that no person shall be arrested, or imprisoned or searched except in accordance with the law (paragraph *b*); that houses are inviolable – they may not be entered or searched except in manners prescribed by law (paragraph *c*).

The Constitution also guarantees the privacy of postal, telegraphic and telephone communications, which may not be exposed except for the requisites of justice and security and in accordance with the limits and rules prescribed by law (article 23).

The Constitution does not allow the prohibition of citizens from travelling abroad or returning, or the restriction of their movement and residence within the country except in cases prescribed by law (article 24).

Freedom of religion and belief and the practice of religious rites are guaranteed provided this does not violate the Constitution, the laws, or public order and morals (article 25).

The Constitution guarantees freedom of opinion, publication, assembly, demonstration, the establishment of political parties, unions and associations in keeping with the purposes of the Constitution and the limits of the law. The State shall provide the means necessary for the practice of those liberties (article 26).

The Constitution points out the commitment of the State to combat illiteracy and guarantees the right to free education in the primary, secondary and university levels to all citizens (article 27, paragraph *a*). The State shall endeavour to make primary education compulsory and to expand vocational and technical education in the cities and the countryside. It shall also encourage the holding of study courses in the evening in order to enable the masses to work and to be educated at the same time (article 27, paragraph 6).

Education shall aim, in general, at raising and developing the cultural standards, the development of scientific thought and the encouragement of

* Note furnished by the Government of Iraq.

research to meet the requirements of the programmes for economic and social growth (article 28).

The State shall endeavour to provide the masses with the means to enjoy the dissemination of the benefits of contemporary progress among all nationals (article 29).

Equality in the opportunities for public employment is guaranteed by law (article 30, paragraph *b*).

The State also guarantees to provide every able citizen with work (article 32, paragraph *a*).

The State guarantees the improvement of working conditions and the raising of the standards of living and the standards of expertise and education of all working citizens (article 32, paragraph *c*). The State shall also provide the maximum in social security for all citizens in cases of sickness, disability, unemployment or old age (article 32, paragraph *c*). The State shall provide a programme and ensure the necessary means to enable the working citizens to spend their vacations in an atmosphere conducive to improvement in standards of health and development of cultural and artistic talents (article 32, paragraph *e*).

The State shall ensure the protection of general health through the continuous expansion of free medical services for preventive measures, treatment and medicines throughout the country (article 33).

The Republic of Iraq shall extend the right of political asylum to all those who are oppressed in their own countries because of their struggle for the principles of humanitarian liberation to which the people of Iraq are committed in the Constitution. Those who seek political asylum in Iraq may not be handed over to foreign authorities (article 34, paragraph *b*).

Labourers' pensions

The Republic of Iraq has endeavoured to improve the working conditions of labourers and the security of their rights; thus for the first time in Iraq, a law was enacted for the pension of labourers (Law No. 112 for Labourers' Pension and Social Security) by which labourers were entitled to pensions, whereas previously they had been entitled to social security only.

Labour law

The Government enacted a new labour law (No. 151 for the year 1971). Its first chapter states the basic principles of labour in Iraq, namely, that work is a natural right of individuals and should be made available to all able citizens with equal conditions and opportunities for all regardless of sex, race, language or religion, and with wages commensurate with the efforts expended, the quantity and the quality of the produce (article 1, paragraph *a*).

The law also states that work is a sacred duty for all citizens able to perform it (article 1, paragraph *b*), and that the State shall guarantee the right of all citizens to work through the progressive planning of the national economy (article 1, paragraph *c*).

Article 2 states that social solidarity is the primary basis for labour relations as exploitation is non-existent in the public and the co-operative sectors and since exploitation in the private sector is curbed by virtue of the law (paragraphs *a, b, c*).

Article 4 stipulates that the freedom of the union movements shall be safeguarded and the State shall be committed to the provision of all moral and material guarantees to enable the unions to fulfill their duties in confirming the sanctity of work and the protection of the rights and the dignity of workers as well as in developing their personalities and their talents, in order to prepare the working class to participate in a serious and responsible manner in the planning of the economy.

Chapter IV deals with the setting of equitable levels of wages.

Chapter V sets the limit for working hours, whereby eight hours constitute a working day and a working week comprises forty-eight hours unless the law stipulates otherwise. Weekly working hours are divided into six days to be followed by one full day of rest with pay (article 61). Working days are decreased for certain labourers, vocational and factory workers whose working conditions are particularly hard or unhealthful (article 64). Working hours should also include a break of not less than half an hour and not more than one hour, for rest and meals. The timing of this break is determined by the stipulation that the period of continuous work should not exceed five hours (article 65, paragraph *a*). There are also special rules for night work (article 63) and for juvenile and female workers (articles 90, 91).

Chapter VII consists of the regulations for work in mines and quarries to ensure healthful working conditions subject to medical inspection (article 93 etc).

The law stipulates that the worker should have an annual leave of twenty days with full pay (article 72). Those engaged in hard labour or unhealthful work are entitled to one month's leave (article 73). A worker is also entitled to eight days' sick leave with full pay upon presentation of a certified medical report (article 75). Workers are also entitled to all feasts and public holidays with full pay (article 76).

Chapter XI treats the right to strike within the limits prescribed by law.

As for women workers, article 79 prohibits night-time employment and hard or unhealthful working conditions for women. There are special regulations as well for pregnant women (article 80). Their working hours must not exceed seven hours a day. Nursing mothers are allowed two break periods in a working day (article 86).

Nurseries shall be established at places where women are employed (article 84).

The law absolutely prohibits the employment of juveniles who have not reached the age of sixteen (article 86, paragraph 6), and further prohibits the employment of those who have not attained the age of seventeen in certain kinds of jobs that may be exhausting or injurious, or in night jobs or extra work (article 86, paragraph 6). Their work day is not to exceed seven hours (article 86, paragraph *d*), and their annual leave not less than a full month. A juvenile employee must first be examined by medical authorities in order to be issued a certificate of physical fitness for the employment he undertakes, the medical examination being repeated at least once every year.

The Government of the Republic of Iraq, interested in consolidating trade union movements, has led to the enactment of a number of laws. The most recent and important are:

1. The Dentists' Trade Union Law (No. 38 of 1970).
2. The Chemists' Trade Union Law (No. 44 of 1970).
3. The Pharmacists' Trade Union Law (No. 44 of 1970).
4. The Technical Agriculturists' Trade Union Social Security Fund Law (No. 14 of 1970).

Land reform

The Government of the Republic of Iraq has shown great interest in the question of land reform and the distribution of land among farmers, thus enacting Law No. 7 of 1970 for the transfer of Government owned water pumps and agricultural machinery to the farmers' co-operative associations. The Revolutionary Command Council also issued its decision No. 233 of 18 June 1969 whereby ownership of artesian wells and their machinery was also transferred to the farmers' co-operative associations.

The Republic of Iraq enacted a new agrarian reform law (No. 117 of 1970) to replace the previous law (No. 30 of 1958) in order to implement an effective agrarian reform that would revolutionize agriculture and make it a pillar of general economic and social progress for the country.

The new law comprises the following principles:

1. Limitation of land ownership;
2. Mass distribution of lands among peasants;
3. Agricultural co-operatives.

The protection and guidance of youth

The Government established a Ministry of Youth (Law No. 50 of 1969) to provide guidance and protection to the younger generations. Law No. 3 of 1970 deals with the establishment of sport clubs and their promotion.

International co-operation and solidarity

In the field of international solidarity and co-operation, especially with the United Nations and its specialized agencies, the Government of Iraq recently enacted the following laws:

1. The law ratifying the International Treaty for the Abolition of All Forms of Racial Discrimination (No. 135 of 1969);
2. The law ratifying the Treaty for the Non-Proliferation of Nuclear Weapons (No. 138 of 1969);
3. The law establishing the National Committee for the World Food Programme (No. 207 of 1969);
4. The law ratifying the Rescue of Astronauts and the Recovery of Objects Launched into Outer Space (No. 219 of 1969);
5. The law ratifying the International Labour Agreement No. 22 of 1964 (No. 195 of 1969);
6. The law ratifying the Arab Treaty for Basic Standards For Social Insurance (Social Security) (No. 106 of 1970), which sets internationally accepted basic standards as the minimum level for labour and social security legislations enacted by States Members of the Arab Economic Union Council with a view to raising the standards of these laws and achieving the aims of social justice;
7. The law ratifying the International Covenant on Political Rights and the International Covenant on Social and Cultural Rights (No. 193 of 1970).

IRELAND

THE SOCIAL WELFARE ACT, 1970*

The Social Welfare Act, 1970, introduces schemes of retirement pensions, invalidity pensions and death grants as part of the social insurance system, as well as new schemes of social assistance allowances for deserted wives and for incapacitated aged persons. This Act also increases the rates of social assitance payments and children's allowances, raises from 16 to 18 years the age limit for receipt of increases for dependent children under the various social welfare schemes other than children's allowances, and increases the rates of social insurance contributions.

* Text furnished by the Government of Ireland.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1970)[1]

I

An instrument which may be said to be of historical importance for the protection of the worker (article 23 of the Universal Declaration of Human Rights) has been brought into being by the Italian legislator in the form of Act No. 300 (*Gazetta Ufficiale* No. 131 of 27 May 1970). It contains regulations designed to safeguard the freedom and dignity of the worker, his freedom of association and his trade union activities at his place of work. It also contains regulations with regard to placement.

This text which is more usually known as the Workers' Statute marks the end of a long juridical, trade union and political struggle to give workers a legal instrument designed to improve the protection of their rights, in a new atmosphere where their human dignity and freedom is respected and where freedom of association and its free exercise is guaranteed at places of work. The main sources of inspiraion of the Act are articles 2 and 41 of the Italian Constitution[2] while the new trend in social policy initiated with this Act is largely based on ILO Conventions No. 87, concerning freedom of association and protection of the right to organize and No. 98 concerning the application of the principles of the right to organize and to bargain collectively.[3]

The Act comprises 41 articles, divided into 7 titles.

Title I deals with "the freedom and dignity of the worker". Article 1 establishes, first and foremost, the principle which guarantees workers the right to express freely their personal opinions at their place of work, "irrespective of their political, trade union or religious opinions" and "respecting the principles of the Constitution and the provisions of this Act". Article 2 regulates the activity of sworn watchmen or guards whose duties, in order to avoid any abuse, are restricted exclusively to the protection of the property of the undertaking, and it also prohibits them from being used to supervise work. The use of the so-called "private police" (which was taking on the appearance of espionage) having been brought to an end, article 3 specifies the employer's obligation to communicate in advance to the workers the names and specific functions of staff members assigned to supervise work. In order to maintain "supervision" within human dimensions, article 4 prohibits the use of means of supervising workers' activity at a distance (audio-visual and similar equipment); when such equipment and apparatus must be installed for reasons of organization, production or industrial safety, the prior consent of the trade union representation of the undertaking shall be required. Article 5 covers medical examinations: it is unlawful for the employer to use his own medical services to carry out examinations when an employee is absent through sickness or accident; such examinations may, at the request of the employer, be carried out only by the medical services of the competent welfare institutions; furthermore, an examination of the worker's physical fitness may, at the request of the employer, be carried out only by specialized institutions governed by public law. In order to assist in creating a climate of respect for the dignity and privacy of the worker, article 6 specifies requirements for personal searches, and prohibits them in general, except when they are necessary to protect the property of the undertaking, and are connected with the nature of the tools, raw materials or products; in such cases certain conditions must be observed, and the circumstances in which personal searches may be conducted and the manner in which they are to be carried out, must be agreed by the employer and the trade union representatives of the undertaking or the works committee; in the absence of an agreement, the Inspectorate of Labour must make the necessary provisions. Article 7 covers disciplinary sanctions, particularly in cases where they are not governed by the labour contract which is applicable when it coincides with the provisions laid down in this Act. First of all,

[1] Note prepared by Dr. Maria Vismara, government-appointed correspondent, Rome.

[2] *Article 2:* The Republic recognizes and guarantees the inviolable rights of man, whether as an individual, or in social groups through which his personality develops, and requires the fulfilment of inalienable duties of political, economic, and social solidarity.

Article 41: Private economic initiative is free.

This may not develop in conflict with social utility or in such a manner as to cause damage to security, to liberty and to human dignity.

The law determines the appropriate programmes and controls in order that public and private economic activity may be directed and co-ordinated towards social ends.

[3] Both conventions were ratified by Italy in 1958. See *Yearbook on Human Rights for 1958* (Italy).

the rules with regard to offences, penalties and dispute procedures must be brought to the direct attention of the workers; consequently a system of guarantees is provided against the employer's indiscriminate authority to impose disciplinary measures; they include the obligation to give prior notification and the right of the worker to defend himself and avail himself of the assistance of the trade union, the prohibition of disciplinary measures entailing definitive changes in the employment relationship,[4] the prohibition of fines exceeding four hours' wages and unpaid suspension from work for more than 10 days; specific proccedures to protect the right of the worker to defend himself (conciliation and arbitration board); cancellation of the effects of the disciplinary sanctions two years after their application. Article 8 makes it unlawful to investigate political, religious or trade union opinions not merely with a view to admitting a worker to employment but also during the course of the employment relationship. Article 9 guarantees the right of workers to supervise, through their trade union and technical representatives, the implementation of provisions and other measures concerning the prevention of accidents and the safeguarding of their health and physical well-being. Article 10 regulates the special status of workers who are pursuing studies: they are entitled to special hours of work to enable them to attend classes and prepare for examinations; they are also exempted from overtime work and entitled to paid leave during examinations. Article 11 specifies that cultural, recreational and social activities promoted by the undertaking shall be administered by bodies in which the workers form a majority. Article 12 states that approved welfare and social assistance bodies have the right to engage in their activities within the undertaking in accordance with arrangements to be agreed upon. Article 13 embodies the text substituted for article 2103 of the Civil Code which establishes the right of the employee to be assigned tasks for which he was engaged, or tasks suited to the category in which he was placed subsequently, or tasks equivalent to those he last performed, without incurring any reduction in remuneration. When he is required to perform duties at a higher level, the employee shall receive the corresponding remuneration and, unless he was temporarily substituting for another worker, the appointment shall become definitive. Any agreement to the contrary is null and void.

Title II regulates "freedom of association". Article 14 reaffirms the right of association and the right to carry on trade union activities, also guaranteed within the place of work, and article 15 covers individual discriminatory acts which may be perpetrated by the employer in violation of the principles of freedom of association. It declares null and void any agreement or act designed to subject a worker's employment, dismissal, assignment of qualifications or functions, transfer, any disciplinary measures or any other prejudice, to his membership or otherwise of a trade union, his participation in a strike, or his political views or religious faith.[5] The above provisions are completed by the prohibition in article 16 with regard to the granting of any financially favourable treatment of a discriminatory nature in the sense of the foregoing article. Article 17 concerns "employer-finaced trade unions" and makes their establishment, financing and any other means of support unlawful.[6] Article 18 completes this section and makes provision for the judge to cancel a dismissal and order reinstatement in employment of a worker dismissed "without sufficient cause" or "justification" or when dismissal was occasioned by special reasons (political or religious belief, membership of a trade union and participation in trade union activities);[7] this article changes the previous regulation,[8] which conceded to the employer the alternative obligation of reinstatement or payment of compensation. Now, the worker must be reinstated. The worker is entitled to damages for any prejudice suffered as a result of his dismissal which a judgement has declared to be null and void. He is also entitled to remuneration arising out of the employment relationship for the period which may extend from the date of the judgement to the date of reinstatement. The same provision applies to trade union officers, but with the difference that they may be reinstated in employment, before judgement has been given, when the judge himself considers the evidence submitted by the employer irrelevant or inadequate.

Title III deals with "trade union activities"; articles 19 to 27 give effect to ILO Convention No. 87. Article 19 makes provision for the possibility of trade union representation at the factory level by workers within associations which are affiliated to the most representative confederations at the national level or which are signatories of national or provincial collective labour agreements. Article 20 regulates the right of assembly, which is also recognized during working hours. Meetings may be convened by trade union representatives and may be attended by trade union officers from outside the undertaking. They may take place within the production unit, for not more than 10 paid hours annually, to consider trade union and employment questions. Article 21 recognizes the right of trade union representatives to organize, on matters concerned with trade union questions, a referendum which must be held outside working hours, although within the premises of the undertaking. Article 22 completes the protection of the activities of trade union officers and members of the works committee, extending it to transfers from one production unit to another. These may be made only with the prior

[4] Without prejudice to the provisions of Act No. 604 of 15 July 1966. See *Yearbook on Human Rights for 1966* (Italy),

[5] This article complies strictly with the ILO Convention No. 98, article 1.

[6] *Ibid.*, article 2.

[7] See Act of 15 July 1966, No. 604.

[8] *Ibid.*

consent of the trade union associations of which they are members. Article 22 also invokes the provisions of article 18 with regard to dismissals. Articles 23 and 24 regulate paid and unpaid leaves of absence: the provisions therein are designed to enable trade union officers to perform their duties under the mandate entrusted to them. Article 25 concerns the right to display printed material, documents and communications concerning trade union and employment matters in suitable places in areas accessible to all workers. Article 26 generally establishes the right of workers to collect trade union dues in their places of work and to engage in recruitment activities for their trade union organizations, provided those activities do not interfere with the normal activity of the undertaking. Article 26 also regulates the collection of workers' dues by trade union organizations while article 27 makes it compulsory for the employee to provide the works trade union representatives with suitable premises to carry out their functions.

Title IV covers "miscellaneous and general provisions". Article 28, concerning restraint of anti-union activity, provides, at the initiative of the trade union, for intervention by the judicial authorities, who must take action within two days, ordering the suspension of any activities which limit or impede the exercise of freedom of association and trade union activities or the right to strike. The possible merging of works trade unions is regulated in article 29. Under article 30, paid leave is provided for trade union officers attending meetings of executive bodies. Workers elected to public office or exercising trade union functions may, at their request, obtain unpaid leave of absence, but periods of such leave shall continue to be taken into account for pension purposes and for sickness benefits when there is no other form of protection. Article 32 entitles workers elected as mayors, chairmen of provincial administration, assessors or district counsellors to paid leave of absence during their term of office.

Title V concerns "provisions with regard to placement". Article 33 makes provision for the compulsory establishment, upon request by the trade union organizations, of a placement board as specified by law[9] in the regional, district and village branches of the provincial labour and full employment offices. The board, the majority of whose members are representatives of the workers, has the task of establishing and periodically updating the graded list of candidates (which is posted in public), of issuing work permits, and of establishing working hours in accordance with the provisions in force. Requests for individual workers (article 34) are admitted only in the case of the members of the employer's family, skilled workers and "highly specialized" workers in categories to be specified by decree.

Title VI contains "final provisions and penalties". Article 35 is of importance as far as the scope of the Act is concerned: in the case of industrial and commercial undertakings, the provisions of article 18 and Title III, with the exception of paragraph 1 of article 27 (obligation to provide trade union representatives with suitable permanent premises) apply to every headquarters, establishment, branch, office or independent workshop employing more than 15 workers[10] and to agricultural undertakings with more than five employees. In article 36 special provisions cover the obligation on the part of contractors receiving State subsidies or companies awarded public works contracts to offer their workers conditions not inferior to those specified in collective agreements. Article 37 extends the application of this Act to the work and employment relationships of employees in the service of public bodies engaged in financial activities and to the employment relationships of employees of other public bodies. In article 38 the penal provisions (fine or arrest, or both in serious cases) are laid down for violations of articles 2, 4, 5, 6, 8 and 15 of this Act. Fines are paid into the "pension adjustment fund" (article 39). Articles 40 and 41 deal, respectively, with the repeal of provisions contrary to this Act and tax exemptions for formalities and documents with respect to its implementation.

The principle which affirms that everyone has the right to "security" in the "event of lack of livelihood in circumstances beyond his control" (article 25 (1) of the Universal Declaration) has been extensively although not completely put into effect with the adoption of Act No. 996 of 8 December 1970 (*G.U.* No. 317 of 16 December 1970) embodying provisions on relief and assistance to victims of disaster – civil protection. (The Act does not deal with the problem of civil defence in case of war or exceptional events.)

The provision is based on the criterion of preventive action and anticipation of the state of emergency, by means of prearranged plans and programmes for rapid and effective intervention. Protective measures against disasters include programmes of preventive action to avert the danger or to lessen the damage and programmes of emergency relief. These measures are combined with assistance to victims. The Act, which comprises 22 articles, may be divided into three parts: the first concerns the structure of the civil defence service; the second regulates the functions of the fire brigade; the third is concerned with appropriations to provide the services specified in this Act and to meet the necessary expenditures.

For the purposes of this Act, a natural disaster or catastrophe means "the emergence of situations which involve serious damage or the danger of serious damage to the safety of persons and property and which because of their nature or magnitude must be met with special technical measures" (article 1). Articles 2, 4, 5 and 6 are designed to ensure a uniform policy for reporting the danger of or the actual occurrence of natural

[9] Act No. 264 of 29 April 1949, article 26.

[10] A considerable change in respect of Act No. 604 of 1956, *cit.*, which applied only to undertakings with over 35 employees.

disasters or catastrophes and for directing relief services and co-ordinating the different departments of State, with the co-operation of local and institutional bodies called upon to take part in the emergency operations. In the executive phase, direct relations are established between the Ministry of the Interior, the Regional Commissioner and the Special Commissioner appointed on an *ad hoc* basis by the Ministry of the Interior. Provision is made for using the armed forces for relief services and intervention.

In the phase of preventive action and planning, articles 3 and 7 assign certain responsibilities to the Interministerial Committee for Civil Defence and the Regional Committee for Civil Defence, set up under this Act, at the Ministry of the Interior and in each provincial capital, respectively. The Interministerial Committee is presided over by the Minister of the Interior and has the following tasks: "*(a)* to promote studies and submit proposals to economic planning bodies on measures for averting or reducing the likelihood of the occurrence of a possible and predictable natural disaster or catastrophe and in general to submit any feasible measures with that end in view; *(b)* to promote the co-ordination of emergency plans to implement immediate action after the event has occurred; *(c)* to promote studies of the promptness with which Government measures may be undertaken in the course of relief operations and after the end of the state of emergency; *(d)* to promote the collection and dissemination of any information useful in safeguarding the civil population". The Regional Committee, which is presided over by the President of the *Giunta Regionale*, makes provision, in the regional context, for studies and programmes similar to those planned for the Interministerial Committee. These studies are based on the information and proposals submitted by the region, in accordance with the guidelines for development and planning prepared in advance by the economic planning bodies. Programmes and studies by the Regional Committee are transmitted, for co-ordination purposes, both to the Ministry of the Interior and to the region.

Articles 8 to 16 contain detailed provisions for the organic restructuring and strengthening of the fire brigade, as the central body qualified to intervene in the event of disasters or catastrophes; many more firemen have been added to it so it can discharge the tasks assigned to it under the new regulations; emphasis is laid on its non-military character, its autonomy, its technical qualifications and its hierarchical structure which places it under the direction of the Inspectorate General. Provision is made for the recruiting of volunteers to be enrolled on the staff of the brigade's provincial headquarters; volunteers are required to attend periodic training courses and may be recalled for temporary service in the event of public disasters or catastrophes.

II

Treaties and Conventions relating to human rights which entered into force in Italy in 1970

Protocol relating to the Status of Refugees, adopted in New York on 31 January 1967.

Approved and put into effect by Act No. 95 of 14 February 1970 (*G.U.* No. 79 of 28 March 1970).

International Labour Conventions:

Convention No. 91 concerning vacation holidays with pay for seafarers, adopted in Geneva on 18 June 1949;

Convention No. 99 concerning minimum wage-fixing machinery in agriculture, adopted in Geneva on 28 June 1951;

Convention No. 103 concerning maternity protection, adopted in Geneva on 28 June 1952;

Convention No. 112 concerning the minimum age for admission to employment as fishermen, adopted in Geneva on 19 June 1959;

Convention No. 115 concerning protection of workers against ionising radiations, adopted in Geneva on 22 June 1960;

Convention No. 119 concerning the guarding of machinery, adopted in Geneva on 25 June 1963;

Convention No. 120 concerning hygiene in commerce and offices, adopted in Geneva on 8 July 1964;

Convention No. 122 concerning employment policy, adopted in Geneva on 9 July 1964;

Convention No. 123 concerning the minimum age for admission to employment underground in mines, adopted in Geneva on 22 June 1965;

Convention No. 124 concerning medical examination of young persons for fitness for employment underground in mines, adopted in Geneva on 22 June 1965;

Convention No. 127 concerning the maximum permissible weight to be carried by one worker, adopted in Geneva on 28 June 1967.

Approved and put into effect by Act No. 864 of 19 October 1970 (*G.U.* No. 302 of 28 November 1970, Regular Supplement).

III

The inviolability of the right to defence at all stages of criminal proceedings (Universal Declaration of Human Rights, Article 11 (1)) has been confirmed by the Constitutional Court[11] in three rulings relating to article 24, second paragraph of the Constitution.

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[11] For previous rulings of the Constitutional Court, see *Yearbooks for 1968* and *1969* (Italy).

In its ruling No. 69 of 6 May 1970, the Constitutional Court dealt with a question of constitutional legality raised in an order of the Milan Assize Court. In proceedings relating to points of law concerning the application of the penalty, and at the request of the *Pubblico Ministero*, the Milan Assize Court had submitted to the Constitutional Court the question of the constitutional legality of article 630 of the Code of Criminal Procedure. This article was held to be detrimental to the right of defence guaranteed in article 24 of the Constitution[12] because it allows points of law concerning the enforcement of the sentence to be raised without the interested party being assisted by a defence counsel. It was explained that article 630 of the Code of Criminal Procedure, in laying down that an *ex officio* defence counsel may be nominated to represent an interested party who has been granted legal aid, makes no provision for persons who have not been granted such assistance or who have not yet nominated their own defence counsel.

The Constitutional Court pointed out that "the right of defence in criminal proceedings comprises, in addition to the right granted to each citizen to defend himself, also, if he does not exercise that right, an obligation on the part of the State to provide for his defence by nominating a defence counsel". In Italian constitutional law, this requirement is guaranteed by article 24 of the Constitution. This must be read in conjunction with article 13, which lays down the inviolability of personal liberty, and also with article 3, which, in guaranteeing the principle of equality, postulates that in criminal proceedings *ex officio* defence counsel must always be present, in a supporting role, in all cases which are to be considered equivalent as far as protection of the accused is concerned. The order of the Milan Assize Court was interpreted by the Constitutional Court as being directly intended to invoke the right of defence in this broader context. "And there can be no doubt," – according to the ruling – "that since the necessity for the nomination of *ex officio* defence counsel at all stages of the criminal proceedings has been recognized, it must also be recognized whenever points of law are raised concerning the enforcement of the sentence, i.e. whenever important problems are discussed concerning the freedom of the accused, and in particular the length and nature of the penalty".

The Court therefore declared unconstitutional that part of article 630, first paragraph, of the Code of Criminal Procedure with does not provide that, in proceedings relating to points of law concerning the enforcement of the sentence, the interested party who is not granted legal aid must be assigned an *ex officio* defence counsel if he has not nominated his own private counsel. In connexion with that decision, the Court also declared unconstitutionally that part of the same article 630, first paragraph, of the Code of Criminal Procedure which does not provide that the defence counsel of the interested party must also be notified of the day when the point of law is to be considered ("For the purposes of this judgement, defence is deemed to be the obligatory protection of the interested party, and it is obvious that notification that the court is to be convened should be given to this defence counsel, whether *ex officio* or private.").

The second ruling of the Constitutional Court, No. 76 of 20 May 1970, refers to a group of seven judgements of a constitutional nature based on seven orders made by the judiciary (court and *pretore*) of Turin, Vibo Valentia, Milan, Novi Ligure and Legnano. These orders denounced as violating various articles of the Constitution, article 1 (and by implication article 3) and also articles 2, 4, 5 and 9 of the Act No. 1423 of 27 December 1956, containing "Preventive measures in respect of persons who are a danger to security and public morality".[13] The Constitutional Court, recalling its previous ruling, declared unfounded the challenges to the constitutional legality of articles 1, 2, 3, 5 and 9 of the Act. However, it upheld the complaint that article 4, second paragraph of the Act violated article 24, second paragraph of the Constitution by failing to make provision for "obligatory" assistance on the part of defence counsel.[14]

Ruling No. 190 of the Constitutional Court dated 10 December 1970, which is set out in some detail, refers to the question of the constitutional legality of articles 303, first paragraph and 304 *bis*, first paragraph, of the Code of Criminal Procedure, which had been raised by an order dated March 1969 of the examining judge of the Rome Court, and an order dated June 1970 of the Constitutional Court itself. According to these provisions of the Code, in the course of the formal investigation, the *Pubblico Ministero* alone, and not the defence counsel, may attend the questioning of the accused and make requests, observations and reservations. The Constitutional Court was called upon to decide whether the exclusion of cross-examination during the investigation resulted in an unlawful restriction of the right of defence which article 24, second paragraph of the Constitution guarantees as inviolable at every stage and level of procedure.

The Court decided to determine first whether, in a criminal trial, the role of the *Pubblico Ministero* and that of the defence counsel of the accused were sufficiently similar to permit comparison of the powers the law conferred on each of them. The Court recognized that the *Pubblico*

[12] Article 24 of the Constitution: "... the right of defence is inviolable at every stage and level of procedure ...".

[13] See *Yearbook on Human Rights for 1956* (Italy).

[14] Article 4 of the Act No. 1423 of 1956 concerns the "application" of measures of "special supervision of public security" or those relating to "enforced residence in a prescribed commune", which are matters for the court; the second paragraph of that article lays down that in such cases "The interested party may submit petitions and obtain the assistance of counsel". As a result of this provision, the exercise of the right to defence is purely optional,

Ministero, as a matter of principle, could not be considered a party in the strict sense, since, as a member of the higher judiciary, in a position of official independence with respect to all other authorities, he is not a representative of particular interests, but exclusively concerned with the observance of the law. However, the Court decided that, despite those reasons, the interest represented by the *Pubblico Ministero* and that of the accused remain dialectically opposed. During a criminal trial, the two sides in confrontation are the *Pubblico Ministero*, on the one hand, and the accused and his defence counsel on the other. In view of the clear distinction between the interests dictating their actions, and between the results which they are therefore seeking, it may be concluded that before the judge and in the process of the trial, the above two sides should be considered the parties.

Having thus determined that the *Pubblico Ministero* and the accused are the main parties on either side in the case, the Court once again stated that "the right of defence is, in the first place, a guarantee of cross-examination and of legal assistance". This is true also for the hearing and registering of evidence during the investigation, as the Constitutional Court has already asserted in its ruling No. 52 of 1965.[15]

The Court noted that article 24, second paragraph of the Constitution does not necessarily mean that the right to cross-examination and the presence of the defence counsel must be guaranteed at all times and at all stages of the case; it then decided to ascertain whether, with reference to the matter under consideration, questioning of the accused was of such importance that the absence of the defence counsel and the presence of the *Pubblico Ministero* constituted a serious restriction of the right of defence. The Constitutional Court decided that this was indeed the case, basing its decision both on a detailed examination of the law as it stood relating to trials, and on its previous rulings.

Having thus ascertained that the question was well founded, the Court considered it necessary to decide whether, in relation to the questioning, parity in cross-examination should be guaranteed through the declaration of the partial constitutional illegality of Article 303, first paragraph, or of article 304 *bis,* first paragraph of the Code of Criminal Procedure.[16] The Court held that it was necessary to adopt the second solution, which is the only one in conformity with the general principles underlying the existing code regulating trials, and which constitutes the best guarantee of the inviolable right of defence. The Court stressed that, on the basis of article 303, the *Pubblico Ministero* was permitted to be represented at all stages of the preliminary investigation precisely because of the public nature of its function. If the *Pubblico Ministero* were deprived of the right to be represented during the questioning, that function would be limited, and the above norm would be subject to an illogical exception. At the same time, "the most recent legislative changes jointly demonstrate a trend according to which the presence of the defence counsel during questioning would be preferable to the exclusion of the *Pubblico Ministero*". That would be the most suitable solution to ensure parity in cross-examination between the parties in criminal trials.

For those reasons, the Court declared unconstitutional article 304 *bis,* first paragraph, of the Code of Criminal Procedure where it denies the right of the defence counsel of the accused to be present during questioning; at the same time, it rejected the challenge to the constitutional legality of article 303, first paragraph, where it provides that the *Pubblico Ministero* may be present during questioning of the accused.

Two decisions were handed down by the Constitutional Court on the protection of the rights of workers (Universal Declaration, article 23).

With regard to the protection of workers from arbitrary dismissal, the Constitutional Court handed down decision No. 14 of 29 January 1970 on two related judgements issued by the *Pretore* of Milan and the Bologna court of appeal regarding the constitutionality of article 10 of Act No. 604 of 15 July 1966, which embodies rules governing the dismissal of individual employees.[17] The rule impugned lays down that for the purposes of the application of the Act, labourers and white-collar workers are placed on an equal footing; however, the formulation of article 10 is recognized to exclude any extensive reference to apprenticeship. The judgements in question regretted the fact that in the case of two apprentice workers, article 9 of Act No. 604 of 1966, which provides for severance payments, was not applied.

It is assumed – the decision states – that by limiting the scope of application of the provision of the aforementioned Act "to workers classified as white-collar workers and labourers within the meaning of article 2095 of the Civil Code,[18] i.e. workers who have already received vocational training apprentices would be implicitly excluded, despite the fact that the relations in question do not differ substantially, in so far as the obligations and rights of the contracting parties are concerned, from the relations of the ordinary worker". This conflicts with both the general principle of equality set forth in article 3 of the Constitution and with the principle of the protection of the

[15] See *Yearbook on Human Rights for 1965* (Italy).

[16] Articles 303 and 304 *bis* of the Code of Criminal Procedure refer respectively to "the powers of the *Pubblico Ministero* in formal investigations" and to "the proceedings which defence counsel may attend".

[17] See *Yearbook on Human Rights for 1966* (Italy).

[18] Civil code, article 2095: "Subordinate workers are divided into administrative or technical leaders, white-collar workers and labourers . . .".

worker and the principle of vocational training set forth in article 35 of the Constitution.[19]

The Court points out that, in view of a number of exegetic and systematic factors and considerations regarding the special nature of the status of apprentices, there is, a considerable body of judicial precedents and legal opinions favouring their exclusion from the category of workers enjoying the right to compensation according to length of service in the event of termination. However, the Court notes that deprivation of that right "irrationally places the apprentice in a position of inferiority and inequality". The fact that apprenticeship involves a fixed-term contract does not imply that, in the event of termination compensation according to length of service, obligatory solely for indefinite relationships, should not be paid. The maximum limit of the apprenticeship period has been established by the provisions in force for the protection of the apprentice, to avoid prolonging an intermediate situation beyond reasonable limits, except for the cases when apprenticeship would subsequently develop into a normal working relationship, under the conditions established by law. Moreover, Act No. 230 of April 1962[20] establishing the rules governing fixed-term contracts, restricts them to certain situations which do not include apprenticeship contracts. Nor would it be valid to equate the contract under consideration with the probationary contract in order to justify non-applicability of compensation based on length of service, under the Constitution. In fact, according to law, a trial engagement is a different form of contract from apprenticeship, which may be preceded by a trial period only for an extremely limited time and with the consent of both parties.

The Court therefore considers that apprenticeship is comparable to the ordinary employment relationship. In support of its view, the Court cites the individual provisions of Act No. 25 of 19 January 1955 regarding apprenticeship[21] and the relevant rules giving effect to them[22] which constitute, as compared with previous rules, "a more precise reflection of developments in the nature of the institution". The special characteristics of apprenticeship are stressed particularly in article 2 of the above-mentioned Act, which specifies that the contract has two elements: that of instruction and that of employment. The first element does not override the other. "It is a complex relationship, made up of elements which, when combined, do not lose their individuality." It follows that, for the apprentice, deprivation of the right to receive, "in every case", on an equal footing with other workers, compensation based on length of service under article 9 of the Act on individual dismissals creates a situation of discriminatory treatment not justified by a difference in the *de jure* and *de facto* position of the persons in question, in obvious violation of article 3 of the Constitution.

Accordingly, the Court declared unconstitutional that part of Act No. 604 of 15 July 1966 which does not include apprentices among those entitled to compensation in accordance with article 9 of that Act.

A further confirmation of the principle of the equality before the law of all citizens (Universal Declaration, article 2) and, also, of the right to strike sanctioned by the Constitution in protection of the interests of workers, was given by the Constitutional Court in decision No. 119 of 18 June 1970.

The question of the constitutionality of the second paragraph of article 635 of the Penal Code was raised as a result of three orders issued by the criminal courts in connexion with three cases against workers accused of causing damage during strikes. The article specifies that the offence of causing damage to the property of others is aggravated by the circumstance that it is committed by "workers on strike", and also justifies proceedings being instituted automatically rather than as the result of a complaint. Two of the orders referred to article 3 and the other to article 40 of the Constitution.[23] The Court handed down a single decision.

The Court lays particular emphasis on the fact that the contested regulation is typical of fascist legislation which disregarded the right to strike and had sought by means of this provision to place the onus for any damages on the strikers themselves. "In effect, the contested regulation, which in itself constituted an instrument for the repression of strikes under the corporative system with which it was associated, collapses with the collapse of the system. Similar considerations also apply to damage caused by employers, during lock-outs." Accordingly, the Court notes that the contested provision, by placing the onus in particular on the striking worker, has the effect of punishing him more severely than a third party who is guilty of causing damage in the same circumstances. No such distinction should be made once the strike has been acknowledged to be lawful. Consequently, discriminatory treatment of

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[19] Article 35 of the Constitution: "The Republic protects labour in all its forms and applications. It looks after the development and the professional advancement of workers. It promotes and favours international agreements and organizations designed to affirm and regulate the rights of labour. It recognizes freedom of emigration, except for obligations established by law in the general interest, and it protects Italian labour abroad".

[20] See *Yearbook on Human Rights for 1962* (Italy).

[21] See *Yearbook on Human Rights for 1955* (Italy).

[22] Decree of the President of the Republic No. 1618 of 30 December 1956.

[23] Constitution, article 3: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, or personal and social condition.

"It is the task of the Republic to remove the obstacles of an economic and social order which limit in fact the liberty and equality of citizens, prevent the full development of the human personality and effective participation by all workers in the political, economic and social organization of the country."

Constitution, article 40: "The right to strike is exercised within the sphere of the laws which regulate it."

that kind is quite unjustified and constitutes a violation of article 3 of the Constitution.

The Court therefore declares unconstitutional that part of article 635, second paragraph, of the Penal Code, which states that the offence of damage caused by a worker on strike or by an employer during a lock-out is an aggravating circumstance and a ground for instituting proceedings automatically.

Two judgements issued by the Constitutional Court contain significant innovations relating to equal rights of both spouses (Universal Declaration, article 16 (1)) and discrimination on the grounds of birth (Universal Declaration, article 2, first paragraph).

Decision No.133 of 24 June 1970 concerns five related judgements on the constitutionality of the first paragraph of article 145 and the first paragraph of article 156 of the Civil Code. Article 145 of the Civil Code states that, while it is the husband's duty to provide, in proportion to his means, for his wife's livelihood (first paragraph), she is required to contribute to his maintenance only if he has insufficient means (second paragraph). On the assumption that this provision constitutes a disparity in treatment between husband and wife and places the wife in an unduly privileged position, the *pretore* of Venice, in view of the most recent trends in the legal opinions handed down by the Constitutional Court on the rights and duties of spouses, took up, on the basis of article 29 of the Constitution,[24] the question of the constitutionality of the first paragraph of article 145 which had been declared unfounded by the Constitutional Court in decision No. 144 of 1967.

The Constitutional Court states that as a result of that decision it has been called upon on a number of occasions to examine the constitutionality of other provisions relating to this subject. In accordance with the guidelines laid down in decisions Nos. 126 and 127 of 1968 and No. 147 of 1969,[25] based on article 29 of the Constitution, "it should be borne in mind that provisions which are a source of disadvantage for one of the spouses cannot be justified, in assessing their constitutionality, by the fact that other provisions place the same spouse in a privileged position (or vice versa) with regard to other objective situations arising from the marriage". And "since it is acknowledged that the interests of family unity constitute the only legitimate restraint upon the equality of both spouses, ... the only relevant criterion is whether occasional disparities in treatment are justified constitutionally by that requirement".

On the case in question, the Court states that there can be no doubt that the part of article 145 which is impugned treats the spouses differently. It is obvious that the two obligations specified in that article are clearly differentiated because "while the husband's obligation is unconditional in the sense that it is prescribed irrespective of the economic situation of the wife, she is required to maintain her husband only if he has insufficient means". This situation implies a considerable legal inequality. "The Court considers that such unequal treatment cannot be justified in the interests of family unity", and, in fact, it is precisely that equality in financial dealings between spouses which guarantees such unity.

Accordingly, the Court declares unconstitutional the part of the first paragraph of article 145 of the Civil Code which does not make the husband's obligation to provide, in proportion to his means, for his wife's maintenance conditional upon her having insufficient means.

On the question of the constitutionality of the first paragraph of article 156 of the Civil Code, the Court rules that it is unfounded because it no longer has any basis. "As a result of the decision that the first paragraph of article 145 is partially unconstitutional, the treatment of the husband and wife has been equalized. Therefore, the contested first paragraph of article 156, which safeguards for the innocent party the rights attaching to his or her status after separation has taken place (and when, as in the case in question, rights incompatible with the state of separation are not at issue), no longer contains any element of differentiation depending on whether it concerns the maintenance obligation devolving upon the guilty husband towards the wronged wife or the same obligation of the guilty wife towards the wronged husband."

In decision No. 205 of 18 December 1970, the Constitutional Court rules that a number of provisions in the Civil Code regarding the legal capacity of natural children to benefit under a will are unconstitutional. An order issued by the Court of Milan raised the question of the unconstitutionality of the first paragraph of article 593 of the Civil Code in so far as it restricts the legal capacity "of natural children who cannot be acknowledged" to benefit under a will.[26] The Court considered the question well founded, on the basis of article 3 of the Constitution, which proclaims the equality of all citizens.

The first paragraph of article 593 of the Civil Code specifies that when the testator leaves legitimate children or their descendants, his natural children who cannot be acknowledged and whose filiation is effected lawfully,[27] may not individually inherit under a will more than half the amount received by the least favoured of the

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[24] Constitution, article 29: "The Republic recognizes the rights of the family as a natural society based on marriage.

"Marriage is founded on the moral and juridical equalities of the parties, within the limitations established by law to guarantee the unity of the family."

[25] See *Yearbooks on Human Rights for 1968* and *1969* (Italy).

[26] See *Yearbook on Human Rights for 1969* (Italy) on the right of succession of "acknowledged or declared natural children" in decision No. 79 of 1969 of the Constitutional Court.

[27] See article 279 of the Civil Code.

legitimate children and may in no case receive *in toto* more than one third of the estate. The Court states that "by this provision the legislator has seriously restricted the legal capacity of these natural children to benefit under a will". The unconstitutionality of the provision is clear if one considers the position in which it places natural children who cannot be acknowledged vis-à-vis all other persons outside the legitimate family. The latter enjoy the full legal capacity to benefit under a will; whereas the capacity of the former is restricted. Consequently, the testator is free to make provision in favour of third parties outside the family and may leave the entire disposable portion of his estate to them, but cannot do the same for his natural children. The unfavourable position of natural children who cannot be acknowleged with regard to persons outside the legitimate family cannot be justified either in the substance or the purpose of the provision.

The Court adds that the same considerations apply to the provisions of the second and fourth paragraphs of article 593 of the Civil Code concerning, respectively, the restriction of the legal capacity of natural children who cannot be acknowledged to benefit under a will in cases when the spouse outlives the testator, and the applicability of restrictions upon the legal capacity to benefit under a will (laid down in the first and second paragraphs) of unacknowledged children who could, however, be acknowledged under the third paragraph of articles 251 and 252.[28] The Court considers unconstitutional the restriction on the legal capacity to benefit under a will of natural children who have been acknowledged or declared, in respect of whom article 592 states that, where there are legitimate descendants, they may not inherit under a will more than they would have done if the succession had been transferred according to law. It also considers unconstitutional that part of article 599 which specifies that testimentary dispositions in favour of persons held to be ineligible under articles 592 and 593 are null and void even when effected through a nominee.

The Court accordingly declares unconstitutional article 593, first paragraph, of the Civil Code. It also declares unconstitutional article 593, second paragraph and that part of the fourth paragraph which deals with the applicability of the provisions contained in the first and second paragraphs to unacknowledged children who could be acknowledged under articles 251 and 252; third paragraph; article 592; and the part of article 599 which refers to articles 592 and 593.

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[28] Articles 251 and 252 of the Civil Code relate to the acknowledgement of incestuous children and of adulterous children respectively.

JAMAICA

NOTE[1]

During the year 1970, there have been no constitutional amendments but there have been legislation and administrative orders relating to human rights as defined by the Universal Declaration of Human Rights. There were also two relevant judicial decisions.

I. LEGISLATION – ACTS

1. *Re Article 21 (1) and (3) of the Universal Declaration*

In order to ensure the right of everyone to take part in the government of his country and to preserve genuine elections, an Act (No. 5 of 1970), was passed amending the Representation of the People Law. This act makes it an offence, carrying with it a term of imprisonment not exceeding two years or a fine not exceeding J$400.00 for anyone who, without due authority destroys or otherwise interferes with any ballot box then in use for purposes of any election.

The principle of this amendment was embodied in two similar Acts, Nos. 6 and 7 of 1970, relating to local elections and amending the Kingston and St. Andrew Corporation Law and the Parish Councils Law respectively.

2. *Re Articles 22 and 25 (1) of the Universal Declaration*

The Ministry of Labour and National Insurance continues its comprehensive review of social security schemes. Towards this end an appreciable number of improvements were effected to the National Insurance Act, 1965 by the National Insurance (amendment) act, 1970 which amends the principal Act. The amendment extended the benefits to be derived from the National Insurance Scheme; it clarified the amount of contribution which a self-employed person shall be liable to make and gave the Minister power to issue regulations modifying, as he thinks proper, the application to persons referred to as "mariners" and "airmen".

[1] Note furnished by the Government of Jamaica.

II. LEGISLATION – ADMINISTRATIVE ORDERS

1. *Re Articles 22 and 25 (1) of the Universal Declaration*

On 29 September 1970 The National Insurance (Determination of Claims and Questions) (Amendment) Regulations 1970 were issued. These set out the procedure for processing claims made under the National Insurance Scheme.

2. *Re Articles 3 and 7 of the Universal Declaration*

The House of Representatives on 18 August 1970 approved The Poor Prisoner's Defence (Amendment of First Schedule) Resolution 1970. This Resolution extended the offences for which legal aid may be given to include robbery with aggravation, burglary with intent to commit a felony other than rape; and attempt at rape.

3. *Re Article 23 (3) of the Universal Declaration*

The minimum Wage (Laundry and Dry Cleaning Trade) Order 1970 came into force on 4 May 1970. This Order lays down minimum rates of wages for single-time work in the Laundry and Dry Cleaning Trade. It breaks down the workers into various categories, each of which falls into three classes. The minimum rate varies according to the class of the particular category.

On 8 June 1970 the Minimum Wage (Occupation Records) (Hotel Trade) Notice 1970 came into force. Every employer in the hotel trade is required to keep the occupation records specified in the schedule to the Notice. On the said day regulations providing for new minimum rates for single-time work in Hotels and Guest Houses per week of forty-eight hours, six days per week (including Sundays) and eight hours per day came into operation.

Regulations effective from 24 August 1970 brought new minimum wage rates into operation for workers in the retail Petrol Trade.

A new Minimum Wage scale came into operation on 23 November, 1970 for workers in the bread, bun and cake bakery trade. The new

provisions prescribed minimum rates of wages for single-work per week of 44 hours.

III. OTHER ACTS

An Act to Amend the Probation of Offenders Law (No. 10-1970)

This Act provides for a copy of the probation officer's report to be given by the Court (other than a juvenile court) to the offender or his counsel or solicitor in cases where the court is using the report to assist it in determining the most suitable method of dealing with the offender.

An Act to amend the Judicature (Appellate Jurisdiction) Law, 1962 (No. 12 of 1970)

This amendment to the Judicature (Appellate Jurisdiction) Law came into force on 1 November 1970.

It provides that a special verdict found by a jury or Resident Magistrate under subsection (2) of section 23 of the Criminal Justice (Administration) Law shall be deemed to be a conviction of the person in relation to whom such a verdict is found so that in so far as such verdict relates to the insanity of such person, no appeal shall lie from such verdict if at the trial of such person evidence was given by him or on his behalf that he was insane so as not to be responsible according to law for his actions at the time of the act or omission charged against him as an offence.

In cases of petition for the exercise of Her Majesty's mercy, the Act gives the Governor-General power to refer the whole case to the Court where the case shall be heard and determined by the Court as in the case of an appeal by the person convicted *or* any point arising in the case with a view to the determination of the petition refer that point to the Court for their opinion thereon.

Provision is made for the Director of Public Prosecutions, the prosecutor or the defendant, with the leave of the Court, to appeal to Her Majesty in Council on point of Law of exceptional public importance and where it is desirable in the public interest that a further appeal should be brought.

IV. JUDICIAL DECISIONS

1. *The right to take part in the Government – Article 21 (1) of the Universal Declaration*

Gladys Harrison v. *The Attorney General et al.* Tried 18 December 1969, *Robinson J.*

On 13 December 1965 plaintiff was enumerated and given certificate of enumeration in respect of a person already registered in respect of Polling Division No. 16, West Rural St. Andrew.

In January 1966 the plaintiff went to work at Hampton School, Malvern, St. Elizabeth but made regular monthly visits to Lawrence Tavern (the Polling Division in which she was enumerated). On one such visit, on 12 February 1967, she discovered that her name was not on the official list of electors as published for the year 1966.

She visited the Electoral Office twice in order to get her name placed on the official list of electors but these efforts came to nothing.

On the 21 February 1967 Election Day, plaintiff went to the Polling Station for Polling Division No. 16 in the Constituency of West Rural St. Andrew. Her name was not on the official list and as a consequence she could not vote.

The plaintiff thereupon brought an action claiming (1) damage against the Attorney General for negligence and against the Chief Electoral Officer for breach of statutory duty; (2) a declaration that she had a right to have her name placed on the official list of electors for the constituency of West Rural St. Andrew, Polling Division No. 16 for the year 1966.

Held. Plaintiff was a qualified person within the meaning of the Representation of the People Law, Cap. 342, to be registered as an elector on the official list of electors for the year 1966; that the duty imposed on the Chief Electoral Officer by Section 8 (1) of Cap. 342 to prepare the official list is a duty for the benefit of defined individuals namely, Jamaican citizens over the age of twenty-one who were not subject to any disqualifications; that the plaintiff had a right of action arising out of the omission of her name from the list for 1966 and that she suffered damage consequent on that omission.

Judgement was entered for the plaintiff against the Defendants in the following terms:

(i) A declaration that she had a right to have her name placed on the official list of electors for the constituency of West Rural St. Andrew, Polling Division No. 16 for the year 1966.

(ii) $2,000 damages
   (a) against the Attorney General for negligence as found by the jury;
   (b) against the Chief Electoral Officer for breach of statutory duty.

(iii) Costs to the plaintiff to be taxed or agreed.

An appeal is pending.

2. *Political discrimination – the right to work – Articles 2, 7, 23 (1) of the Universal Declaration*

Allan George Richard Byfield v. *Edwin Leopold Allen* Court of Appeal: 8-12, 15-16 December 1969; 12-16, 19-23, 26-27 January 1970.

The Court of Appeal affirmed the judgement of the Supreme Court on 26 April 1965 dismissing an action by the plaintiff against the defendant in which the plaintiff claimed, *inter alia*, a declaration that refusal of the defendant in his capacity as Minister of Education to confirm the appointment of the plaintiff as Headmaster of the Trench Town Senior School as set forth in a letter from

the defendant to the Secretary of the Kingston Board dated 18 January 1963 was in contravention of the fundamental rights and freedoms guaranteed to the individual by Section 24 (2) of the Constitution of Jamaica.

The relevant portions of Section 24 of the Constitution are as follows:

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinion, colour or creed, whereby persons of one such description are subject 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.

The plaintiff contended that the defendent in his capacity as Minister of Education refused to approve his appointment as Headmaster of the Trench Senior School because he was a member of the General Council and of the Central Executive of the People's National Party in opposition to the governing Party, the Jamaica Labour Party.

The Court found that the plaintiff failed to prove the alleged discrimination within the meaning of Section 24 subsections (2) and (3) of the Constitution of Jamaica.

THE LAW REFORM (HUSBAND AND WIFE) ACT, 1970

Act No. 11-1970, assented to on 23 April 1970[2]

2. Section 2 of the Married Women's Property Law is hereby amended by deleting the words "and subject, as respects actions in tort between husband and wife, to the provisions of section 13 of this Law,".

3. (1) Subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears:

(a) That no substantial benefit would accrue to either party from the continuation of the proceedings; or

(b) That the question or questions in issue could more conveniently be disposed of on an application made under section 16 of the Married Women's Property Law (determination of questions between husband and wife as to the title to or possession of property),

and without prejudice to paragraph *(b)* the court may, in such an action, either exercise any power which could be exercised on an application under the said section 16, or give such directions as it thinks fit for the disposal under that section of any question arising in the proceedings.

(3) Provision shall be made by rules of court for requiring the court to consider at an early stage of the proceedings whether the power to stay an action under subsection (2) should or should not be exercised.

(4) In subsection (1) the expression "the parties to a marriage" includes the persons who were parties to a marriage which has been dissolved.

4. This Act does not apply to any cause of action which arose, or would, but for the subsistence of a marriage have arisen, before the commencement of this Act.

5. Section 13 of the Married Women's Property Law is hereby repealed and the following section substituted therefor:

"13. (1) A married woman shall have the same remedies and redress by way of criminal proceedings for the protection and security of her own property as if she were a *feme sole*:

"Provided that no criminal proceedings shall be taken by any wife against her husband by virtue of this section while they are living together as to or concerning any property claimed by her, nor while they are living apart as to or concerning any act done by the husband while they were living together concerning property claimed by the wife, unless such property has been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

"(2) In any criminal proceedings taken by virtue of this section it shall be sufficient to allege that the property to which such proceedings relate is the property of the wife."

6. Section 23 of the Married Women's Property Law is hereby repealed.

[2] *The Jamaica Gazette*, Supplement, No. 8, of 15 May 1970.

JAPAN

NOTE*

I. Legislation

The following are the laws established during 1970 concerning environmental pollution.

1. *Partial Amendment Law to the Basic Law for Environmental Pollution Control (Law No. 132, enacted on 25 December 1970)*

In view of the recent aggravation of environmental pollution, this law, being designed to emphasize the vital importance of environmental pollution control for the preservation of a healthy and civilized life for every citizen of the country, lays down the necessary measures for soil pollution control and for the proper disposal of waste and also makes a provision for the establishment, in each prefectual government, of an environmental pollution control measures council. The main purpose of this law is to promote comprehensive policies to combat environmental pollution for the purpose of protecting the people's health and conserving their living environment by clarifying the responsibilities of the enterprises, the State and the local government bodies for environmental pollution control measures and by determining the fundamental requirements for such measures.

2. *Partial Amendment Law to the Air Pollution Control Law (Law No. 134, enacted on 25 December 1970)*

In view of the recent aggravation of air pollution, this amendment law, being enacted for the purpose of improving and strengthening the air pollution control measures, has expanded the scope of its application to the whole country, instead of the specified areas to which the law formerly applied, and it stipulates that each prefectural government is authorized, depending upon the actual condition of the area in its jurisdiction, to set harder standards for emission of harmful pollutants than the national ones. This law further stipulates such new steps as to regulate the use of fuel in the central parts of city areas where air pollution is especially conspicuous, and also the discharge of dust, soot and such toxic substances as cadmium and sodium fluoride, etc.

3. *Water Pollution Control Law (Law No. 138, enacted on 25 December 1970)*

As measures for water pollution control, the Law for Conservation of Water Quality in Water Areas for Public Use (Law No. 181, established in 1958) and the Factory Effluent Control Law (Law No. 182, established in 1958) were enacted to regulate effluent in specific water areas designated by these laws. The Law enacted on 25 December 1970 is designed for the drastic improvement of these laws and is aimed at preventing the pollution of the quality of water by controlling the effluent from factories and enterprises into the water areas designated for public use, in order to protect a healthy living and ensure a good living environment for all people.

4. *Partial Amendment Law to the Sewerage Law (Law No. 141, enacted on 25 December 1970)*

In view of the recent aggravation of pollution of the water areas for public use, this law is designed to streamline the completion of sewerage systems as well as their appropriate maintenance and administration, by providing for the formation of a comprehensive programme to equip each drainage area with complete sewerage systeme and the operation and administration of such sewerage and at the same time, the law compels those enterprises which discharge harmful waste water to report the kind and nature of their waste water to the competent authorities, and it provides for other necessary matters.

5. *Marine Pollution Prevention Law (Law No. 136, enacted on 25 December 1970)*

This law is an over-all revision of the Law concerning the Prevention of the Seawater Pollution Caused by Oil Discharge from Ships enacted in 1967 (Law No. 127, 1967). The revision has been done for the purpose of preventing the ocean from being polluted and of conserving the good sea environment by controlling the discharge of oil and wastes from ships and other maritime facilities.

6. *Partial Amendment Law to the Natural Parks Law (Law No. 140, enacted on 25 December 1970)*

This law provides for the protection of excellent natural environments and for the appropriate use

* Note furnished by Mr. Isamu Kageyama, government-appointed correspondent, Tokyo.

thereof as well as for the responsibilities of the State, etc. for keeping natural parks and other public places clean. This law also has such provisions as regulating the discharge of sewage to conserve the natural beauty of lakes and ponds in specially designated areas, and thus ensuring the protection of natural parks.

7. *Agricultural Land Soil Pollution Prevention Law (Law No. 139, enacted on 25 December 1970)*

In view of the recent aggravation of agricultural land soil pollution, this law stipulates those necessary measures which should be taken to prevent the agricultural land from being polluted by specific harmful substances and to eliminate such pollution and also to rationalize the utilization of such polluted land.

8. *Partial Amendment Law to the Poisonous and Deleterious Substances Control Law (Law No. 131, enacted on 25 December 1970)*

This Amendment Law provides, among others, for the technical standards for the transport of poisonous and deleterious substances, which is necessary for the proper treatment of such substances, and defines the component standard of such substances, ensuring the safe use of poisonous and deleterious substances made available for use in daily life.

9. *Waste Disposal and Public Cleansing Law (Law No. 137, enacted on 25 December 1970)*

In view of the actual condition of waste disposal in recent years, this law, an over-all revision of the Public Cleansing Law of 1954 (Law No. 72), is enacted for the purpose of conserving a healthy living environment for all people and of contributing to the promotion of public hygiene, by firmly establishing the system of disposal of industrial waste.

10. *Partial Amendment Law to the Noise Regulation Law (Law No. 135, enacted on 25 December 1970)*

Under this law, which has been introduced to reinforce the existing measures for noise control, the scope of areas to be designated by prefectural governors as "areas where noise must be regulated" has been expanded and a maximum permissible limit on automobile noise has newly been established.

11. *Partial Amendment Law to the Road Traffic Law (Law No. 143, enacted on 25 December 1970)*

In view of the actual condition of the recent damage caused by road traffic to the living environment and health conditions of the people, this law is designed to consolidate the existing provisions of the Road Traffic Law so that traffic regulations can be enforced specifically for the prevention of the above-mentioned damage.

12. *Law for the Punishment of Crimes Relating to the Environmental Pollution which Adversely Affects the Health of Persons (Law No. 142, enacted on 25 December 1970)*

In view of the recent aggravation of environmental pollution, this law is enacted for the purpose of contributing to the prevention of environmental pollution adversely affecting the health of persons, in combination with the control measures based upon other laws or ordinances designed to prevent such pollution, by punishing those acts, etc. which cause such pollution in the conduct of business activities.

13. *Law concerning the Settlement of Environmental Pollution Disputes (Law No. 108, enacted on 1 June 1970)*

This law provides for the procedures of mediation for reconciliation, conciliation and arbitration for the benefit of the parties involved in environmental pollution disputes for the purpose of achieving the appropriate and speedy settlement of such disputes.

14. *Law concerning Entrepreneurs' Bearing of the Cost of Public Pollution Control Works (Law No. 133, enacted on 25 December 1970)*

This law, based on article 22, paragraph 2 of the Basic Law for Environmental Pollution Control, is designed to determine the matters concerning the entrepreneurs' bearing of the cost of public pollution control works, such as the scope of environmental pollution control works, the items of the cost to be borne by them, and the method of calculation of the amount to be borne by each entrepreneur, etc.

II. Court decisions

No court decisions worth mentioning were rendered.

III. Main trends

(1) *System of Civil Liberties Commissioners*

The number of Civil Liberties Commissioners (civilian workers) as of 31 December 1970 was 9,300 (including 1,030 female commissioners), an increase of 74 over the previous year.

Speaking of their activities, they reported to the competent authorities 5,498 cases of violation of human rights, including those which they investigated, and the number of cases in which they were consulted by local residents about human rights problems reached 115,368, which shows an increasing trend year by year.

There is no need to add that those commissioners are also engaged in various kinds of activities in each local community to disseminate and promote the idea of freedom and human rights.

(2) *Human Rights Week*

During the 22nd Human Rights Week from 4 December through 10 December 1970, various campaigns for the promotion of respect for human rights were carried out throughout the country. Details of these activities were already reported to the United Nations Secretariat in spring this year.

(3) *Legal aid system*

Legal aid work, which provides legal aid service for those involved in civil cases without ample financial means, is being carried out by the Legal Aid Association under the supervision of the Ministry of Justice. And such legal aid cases handled by the association are steadily increasing year by year. The association decided to provide such aid in 2417 cases in 1970 (cf. 1968 cases in 1969). Suits for recovery of damages in traffic accidents occupied 39.1 per cent of them and there were also a considerable number of suits for divorce and for recognition of child as well as disputes regarding immovables.

In 1970, a subsidy of 85 million yen (equivalent to 223,000 US dollars) from the National Treasury was appropriated for legal aid, an increase of 5 million yen (equivalent to 12,000 U.S. dollars) over the previous year.

IV. General trends

Though the idea of freedom and respect for human rights has been infiltrated among the people in Japan, it is inevitable that the economic growth of the country, together with changes in various phases of the society, have made the patterns of human rights violations more complicated.

While it is clear that a considerable portion of the problems of environmental pollution, traffic accidents, medical care and the aged should be dealt with from the standpoint of protecting human rights, we cannot deny the tendency that many people who are very eager to claim their rights are quite insensitive to those of others. And, in this connexion, it is still important to further promote the activities for protecting the rights of the people.

In 1970 the Civil Liberties Bureau of the Ministry of Justice and the Civil Liberties Commissioners received a total of 8,949 cases of infringement of human rights (those investigated for alleged infringement of human rights), a slight decrease when compared with the previous year, and the number of cases which were brought by citizens to the authorities and Commissioners for consultation reached 239,975, an increase of about 2,000 over the previous year.

KENYA

PROTECTION OF HUMAN RIGHTS UNDER THE LAWS OF KENYA[1]

A. The constitution of Kenya 1969

The Constitution of Kenya was amended and restated in 1969 by an Act of Parliament which reproduced the said Constitution in a revised form.[2] In the spirit and the letter of the principles and objectives embodied in the 1948 Universal Declaration of Human Rights, the present Constitution provides in chapter V clauses on the protection of fundamental rights and freedom of the individual and ensures, *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. The Constitution also defines precisely conditions under which the State may, in time of emergency, derogate from the duty of observing the rights guaranteed protection under the Constitution. But such derogation is the exception since under normal circumstances, the Constitution states clearly that there shall be no derogation from these fundamental rights and freedoms.

These human rights and fundamental freedoms, found in the Universal Declaration, reflected in the Kenyan Constitution, are enshrined in the United Nations Covenant on Social, Economic and Cultural Rights, and the United Nations Covenant on Civil and Political Rights. The Government of Kenya has now ratified these two Covenants as well as the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

B. Relevant Legislation of 1970

During 1970, the Government of Kenya enacted three laws which concern the general area of protection of human rights and fundamental freedoms. As given below such legislation includes: The Defamation Act, 1970; The Indemnity Act, 1970; and The Law of Domicil Act, 1970.

1. *The Defamation Act, 1970*

...

2. In this Act, unless the context otherwise requires:

"Legislature", in relation to any part of the Commonwealth which is subject to a central and a local legislature, means either of those legislatures;

"Newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale, and which is published in Kenya either periodically or in parts or numbers at intervals not exceedings 36 days;

"Parliamentary report" means a report, paper, notes or proceedings purporting to be published by the order or under the authority of the National Assembly or the East African Legislative Assembly;

"Wireless broadcasting" means publication for general reception by means of radio communication within the meaning of the East African Posts and Telecommunications Act of the Organization, and "broadcast by wireless" shall be construed accordingly;

"Words" includes pictures, visual images, gestures and other methods of signifying meaning.

3. In any action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

4. In any action for slander in respect of words imputing unchastity to any woman or girl, it shall not be necessary to allege or prove special damage:

Provided that in any such action a plaintiff shall not recover more costs than damages unless the court shall certify that there was reasonable ground for bringing the action.

[1] Note furnished by the Government of Kenya.

[2] The text of the revised Constitution appears in the *Kenya Gazette Supplement*, No. 27 (Act No. 3), Act 5 of 1969, Nairobi 18 April 1969. For extracts from this Constitution, see *Yearbook on Human Rights for 1969*, pp. 141-143.

5. (1) In any action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage:

(a) If the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) If the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Subsection (1) of section 8 of this Act shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

6. A fair and accurate report in any newspaper of proceedings heard before any court exercising judicial authority within Kenya shall be absolutely privileged:

Provided that nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.

7. (1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged unless such publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule of this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish, in the newspaper in which the original publication was made, a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section 4 of the Law of Libel Amendment Act 1888, of the United Kingdom) immediately before the commencement of this Act or conferred by this Act.

8. (1) For the purposes of the law of libel and slander, the publication of words by wireless broadcasting shall be treated as publication in a permanent form.

(2) Sections (6) and (7) of this Act shall apply in relation to reports or matter broadcast by wireless as part of any programme or service provided for general reception by means of a wireless broadcasting station within Kenya, and in relation to the wireless broadcasting of such reports or matters, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper, and subsection (2) of the said section 7 shall have effect, in relation to any such wireless broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which".

9. (1) In any action for libel in respect of the publication of a parliamentary report it shall be a defence for the defendant to produce to the court a certificate under the hand of the Speaker of the National Assembly or of the Chairman of the East African Legislative Assembly, as the circumstances of the case may require, that such report was published by the order or under the authority of the Assembly concerned, together with an affidavit verifying such certificate.

(2) A defendant intending to produce a certificate mentioned in subsection (1) of this section shall give to the plaintiff at least 24 hours notice of his intention in that behalf.

10. In any action for libel in respect of the publication of a copy of a parliamentary report it shall be a defence for the defendant to produce to the court such parliamentary report, and such copy, together with an affidavit verifying such parliamentary reports and the correctness of such copy.

11. In any action for libel in respect of the publication of any extract from, or abstract of, any parliamentary report it shall be a defence for the defendant to show that the matter in question was in fact an extract from, or abstract of, a parliamentary report and that the publication thereof was *bona fide* and without malice.

12. (1) In any action for libel contained in a newspaper or other periodical publication it shall be a defence for the defendant to show that such libel was inserted in such newspaper or periodical without malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity thereafter, he inserted in the same newspaper or periodical publication a full apology for the said libel, or if the newspaper or periodical publication in which the said libel appeared should ordinarily be published at intervals exceeding one week, had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff.

(2) The defence provided by this section shall not be available unless, at the time of filing his defence, the defendant has made a payment into court by way of amends.

13. (1) A person (in this section referred to as the defendant) who has published words alleged to be defamatory of another person (in this section referred to as the plaintiff) may, if he claims that the words were published by him innocently in relation to the plaintiff, make an offer of amends under this section, and in any such case:

(a) If the offer is accepted by the plaintiff and is duly performed, no proceedings for libel or slander shall be taken or continued by the plaintiff

against the defendant in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);

(b) If the offer is not accepted by the plaintiff, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him against the defendant in respect of such publication, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit made by the defendant specifying the facts relied upon by him to show that the words in question were published by him innocently in relation to the plaintiff, and for the purposes of a defence under paragraph *(b)* of subsection (1) of this section no evidence other than evidence of facts specified in such affidavit shall be admissible on behalf of the defendant to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer:

(a) In any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the plaintiff in respect of those words.

(b) Where copies of a document or record containing such words have been distributed by or with the knowledge of the defendant, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the plaintiff.

(4) Where an offer of amends under this section is accepted by the plaintiff:

(a) Any question as to the steps to be taken in fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the High Court, whose decision thereon shall be final;

(b) The power of the court to make orders as to the costs in proceedings by the plaintiff against the defendant, or in proceedings in respect of the offer under paragraph *(a)* of this subsection, shall include power to order the payment by the defendant to the plaintiff of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by the plaintiff in consequence of the publication in question,

and if no such proceedings are taken, the High Court may, upon application made by the plaintiff, make any such order for the payment of such costs and expenses as could be made in such proceedings.

(5) For the purposes of this section, words shall be treated as published by the defendant innocently in relation to the plaintiff if and only if the following conditions are satisfied:

(a) That the defendant did not intend to publish them of and concerning the plaintiff, and did not know of circumstances by virtue of which they might be understood to refer to the plaintiff; or

(b) That the words were not defamatory on the face of them, and the defendant did not know of circumstances by virtue of which they might be understood to be defamatory of the plaintiff,

and in either case that the defendant exercised all reasonable care in relation to the publications; and any reference in this subsection to the defendant shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph *(b)* of subsection (1) of this section shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

14. In any action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the reputation of the plaintiff having regard to the truth of the remaining charges.

15. In any action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

16. (1) In any action for libel or slander the defendant may, after giving notice of his intention so to do to the plaintiff at the time of filing or delivering the plea in such action give evidence in mitigation of damages that he made or offered an apology to the plaintiff, in respect of the words complained of, before the commencement of the action or, where the action was commenced before there was an opportunity of making or offering such apology, as soon thereafter as he had such opportunity.

(2) In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

17. (1) The court or a judge may, upon the application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, defamatory statement,

brought by the same plaintiff, make an order for the consolidation of such actions:

(2) After the making of an order under subsection (1) of this section, and before the trial of the consolidated actions, the defendants in any new actions instituted in respect of the same, or substantially the same, defamatory statement and brought by the plaintiff in the consolidated actions, shall be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(3) In a consolidated action under this section, the court shall assess the whole amount of damages (if any) in one sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately, and if the court gives a verdict against more than one of the defendants it shall proceed to apportion the amount of damages so assessed between such defendants, and if costs are awarded to the plaintiff the court shall thereupon make such order as may seem just for the apportionment of such costs between such defendants.

(4) For the purposes of this section, "defamatory statement" means libel, slander, slander of title, slander of goods and other malicious falsehoods.

18. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of such publication such person knows that the matter is defamatory and does not reasonably believe there is a good defence to any action brought upon it.

19. (1) This Act applies for the purpose of any proceedings begun before such commencement.

(2) Nothing in this Act shall affect the privileges of the National Assembly or the East African Legislative Assembly, or the law relating to criminal libel.

20. Subsection (2) of section 4 of the Limitation of Actions Act, 1968, is hereby amended by the addition thereto of the following:

Provided that an action for libel or slander may not be brought after the end of 12 months from such date.

SCHEDULE

Newspaper statements having qualified privilege

PART I

Statements privileged without explanation or contradiction

1. A fair and accurate report of any proceedings in public of:

(a) The legislature of any part of the Commonwealth other than Kenya;

(b) An international organization of which Kenya or the Government of Kenya is a member, or of any international conference to which the Government sends a representative;

(c) A person or body appointed to hold a public inquiry by the government or legislature of any part of the Commonwealth other than Kenya.

2. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of the Commonwealth subject to a separate legislature, or of any proceedings before a court-martial held outside Kenya under any written law.

3. A fair and accurate copy of or extract from any register kept in pursuance of any written law which is open to inspection by the public, or of any other document which is required by such law to be open to inspection by the public.

4. A notice, advertisement or report issued or published by or on the authority of any court within Kenya or any judge or officer of such court or by any public officer or receiver or trustee acting in accordance with the requirements of any written law.

PART II

Statements privileged subject to explanation or contradiction

5. A fair and accurate report of the findings or decisions of any of the following associations, or of any committee or governing body thereof:

(a) An association formed in Kenya for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudication upon matters of interest or concern to such association or the actions or conduct of any persons subject of such control or adjudication;

(b) An association formed in Kenya for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

(c) An association formed in Kenya for the promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

6. A fair and accurate report of the proceedings of any public meeting in Kenya *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

7. A fair and accurate report of the proceedings at any meeting or sitting in Kenya of:

(a) Any local authority or committee of a local authority or local authorities;

(b) Any commission, tribunal, committee or person appointed for the purpose of any inquiry by or under the provisions of any written law;

(c) Any person appointed by a local authority to hold a local inquiry in pursuance of any written law;

(d) Any other tribunal, board, committee or body constituted by or under, and exercising functions under, any written law,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

8. A fair and accurate report of the proceedings at a general meeting of a company or association constituted, registered or certified by or under any written law, not being a private company within the meaning of the Companies Act.

9. A copy of fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any department of the government, Minister, local authority or gazetted police officer.

2. *The indemnity act, 1970*

2. In this Act, "the prescribed area" means the North-Eastern Province and the Isiolo, Marasbit, Tana River and Lamu Districts.

3. (1) No proceeding or claim to compensation or indemnity shall be instituted or made in or entertained by any court, or by any authority or tribunal established by or under any law, for on account of or in respect of any act, matter or thing done within or in respect of the prescribed area after the 25th December, 1963, and before 1st December, 1967, if it was done:

(a) Done in good faith; and

(b) Done or purported to be done in the execution of duty in the interests of public safety or of the maintenance of public order, or otherwise in the public interest,

by a public officer or by a member of the armed forces, or by a person acting under the authority of a public officer or of a member of the armed forces.

(2) If any proceedings or claim such as is referred to in subsection (1) of this section has been instituted before the commencement of this Act, it shall be discharged, subject in the case of proceedings instituted before the 1st June, 1969, to such order as to costs as the court may think it fit to make.

4. Section 3 of this Act does not prevent:

(a) The institution of prosecution of proceedings on behalf of the Government; or

(b) The institution or prosecution of proceedings in respect of any rights under, or alleged breaches of, contract, if the proceedings are instituted within one year after the commencement of this Act.

5. (1) The Minister shall appoint a Committee in each administrative district, consisting of the district commissioner and the local elected leaders, which shall scrutinize every aggrieved case, and shall report their findings to the Minister, who shall issue the necessary certificate.

(2) A certificate under subsection (1) of this section purporting to be signed by a Minister shall be presumed to have been so signed unless the contrary is proved.

(3) The Minister may by order in the Gazette make regulations generally for the implementation of this Act and in particular such regulations may:

(a) Prescribe the constitution and rules of procedure of committees established under subsection (1) of section 5 hereof; and

(b) Prescribe the purposes for which the Minister's certificate shall be sufficient evidence.

6. Nothing in this Act shall prejudice or prevent the institution or prosecution of proceedings for giving effect to a final judgement, decree or order given or made before the commencement of this Act by any court of final resort, or by any other court where the judgement, decree or order of such court is not then the subject of a pending appeal.

3. *The law of domicil Act, 1970*

2. In this Act, "country" means a sovereign State, or where the law of such a State recognizes that different domicils attach to different parts of that State, any such part.

3. Every person shall be deemed to have acquired, at the date of his birth:

(a) If he is born legitimate or deemed to be legitimate, the domicil of his father, or, if he is born posthumously, the domicil which his father had at the date of his death;

(b) If he is born illegitimate, the domicil of his mother.

4. An infant who is a foundling shall be deemed to have acquired domicil in the country where he is found.

5. An infant who is legitimated by the marriage of his parents shall acquire the domicil of his father at the date of the legitimation.

6. An infant whose adoption has been authorized by a court of competent jurisdiction or recognized by a declaratory decree of such a court shall, as from the date of the order or decree, acquire the domicil of the adopter or, where he is adopted by two spouses, that of the husband.

7. A woman shall, on marriage, acquire the domicil of her husband.

8. (1) Where a person, not being under any disability, takes up residence in a country other than that of his domicil with the intention of making that country his permanent home, or where, being resident in a country other than that

of his domicil, he decides to make that country his permanent home, he shall, as from the date of so taking up residence or of such decision, as the case may be, acquire domicil in that country and shall cease to have his former domicil.

(2) A person may intend or decide to make a country his permanent home even though he contemplates leaving it should circumstances change.

(3) An adult married woman shall not, by reason of being married, be incapable of acquiring an independent domicil of choice.

(4) The acquisition of a domicil of choice by a married man shall not, of itself, change the domicil of his adult wife or wives, but the fact that a wife is present with her husband in the country of his domicil of choice at the time when he acquires that domicil or subsequently joins him in that country shall raise a rebuttable presumption that the wife has also acquired that domicil.

9. (1) Subject to the provisions of sub-sections (2) and (3) of this section, the domicil of an infant shall change:

(a) Where the infant was born legitimate or is deemed to be legitimate or has been legitimated, with that of his father, or if his father is dead, with that of his mother; or

(b) Where the infant is illegitimate, with that of his mother:

Provided that where the custody of an infant has been entrusted to his mother by decree of a court of competent jurisdiction, his domicil shall not change with that of his father but shall change with that of his mother.

(2) The domicil of an infant female who is married shall change with that of her husband.

(3) The domicil of an infant, other than a female who is married, whose adoption has been authorized by a court of competent jurisdiction or recognized by a declaratory decree of such a court, shall change with that of his adopter or, where he was adopted by two spouses, that of the husband, or, if the husband is dead, that of the wife.

10. (1) No person may have more than one domicil at any time and no person shall be deemed to be without a domicil.

(2) Notwithstanding that he may have left the country of his domicil with the intention of never returning, a person shall retain such domicil until he acquires a new domicil in accordance with the provisions of this Act.

KUWAIT

NOTE*

The Kuwait Government has enacted during 1970 Law No. 30 related to Public Assistance. This law has re-evaluated the amount of public assistance in such a manner that 9,360 families will benefit from it: it provides that assistance to needy families consist of a minimum of 20 dinars and a maximum of 99 dinars per family according to its size, plus 500 fils per person for gas, electricity and water consumption. This law would thus ensure to needy families a stable income in keeping with the economic development of the country.

* Note furnished by the Government of Kuwait.

LIBYAN ARAB REPUBLIC

ACT No. 58-1970 OF 1 MAY 1970 TO PROMULGATE THE LABOUR CODE*

SUMMARY

Section 1 states that the provisions of this Code shall apply to all persons working under a contract of employment, provided that they shall not apply to members of the employer's family, who work with him and are directly supported by him; domestic employees and persons in a similar category, whose status shall be defined by special orders; persons engaged in pastoral occupations and other forms of agriculture whose situation will be regulated by special regulations; crews of marine vessels, their engineer staff and seamen and the like to whom the Libyan Maritime Code or any other special Act applies; and established and non-established employees of the Government or public bodies. Section 1 also provides that this Code shall apply to manual workers employed by Government and public bodies unless their status has been defined by special regulations made by the Council of Ministers.

As indicated in section 4, every person who is able to work and seeks employment may ask to be registered with the placement office located in the area of his residence. No charge shall be levied from an unemployed person in return for placing him in employment or facilitating his employment in any type of work (section 12).

With regard to the employment of aliens, section 13 provides that they shall not be permitted to engage in an employment activity without a permit from the Ministry of Labour and Social Affairs, the word "activity" being deemed to include any industrial, commercial, agricultural, financial or other work or occupation, including domestic service.

Other provisions of the Act deal with contracts of employment, organization of work and protection of workers, trade unions, labour disputes and penalties.

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* *Al-Jarida al-Rasmiya* 1 May 1970, Special Supplement. A translation of the Act into English has been published by the International Labour Office in *Legislative Series* 1970 – Libya 1.

LIECHTENSTEIN

REGULATION OF 7 JANUARY 1970 GIVING EFFECT TO THE ACT CONCERNING UNEMPLOYMENT INSURANCE[1]

In pursuance of the Act concerning unemployment insurance of 12 June 1969, LGB1.1969 No. 41,[2] the Government hereby orders as follows:

Part I

Insured Persons

I. INSURABILITY

Article 1

(1) A person shall be deemed to be primarily an employed person if he devotes at least half the normal working time to a gainful occupation other than self-employment and earns most of his living, for himself and his dependants, therefrom.

(2) Where a person who is only temporarily occupied as an employed person is also temporarily occupied as a self-employed person, or where a person has, for no compelling reason, no gainful occupation, his chief occupation shall be determined on the basis of his activity during the preceding one-year period. However, such a person shall be insurable only if he is regularly engaged in his chief occupation.

(3) Where an insured person is no longer regularly employed in a verifiable chief occupation, he shall cease to participate in the insurance scheme. However, such a person may retain his status as an insured person for a maximum of two years if it can be assumed that he will resume such an occupation.

Article 2

An employed person who, in addition to his chief occupation, carries on a gainful occupation as a self-employed person, or whose spouse engages in such an occupation, shall be deemed to be insurable, provided that his employability or availability for employment is not thereby seriously affected.

Article 3

(1) A person who is employed in his spouse's enterprise shall not be deemed to be insurable.

(2) A person employed in the enterprise of a relative living in the same household shall be deemed to be insurable only if his relationship to the entrepreneur is clearly that of a contractual subordinate and if his occupation is easily verifiable.

Article 4

A person receiving income or a pension or who has received a lump-sum settlement from a previous occupation or who receives benefits from the old age and dependants' insurance scheme or from the invalid or accident insurance schemes shall be deemed to be insurable provided that his employability is not reduced thereby.

Article 5

Physically or mentally handicapped persons shall be deemed to be insurable provided that they can be placed without undue difficulty in a normal labour market.

Article 6

Where, as a result of illness, accident or other cause, an insured person is temporarily unfit for employment, his insurability shall not be affected thereby.

Article 7

(1) "Place of Residence", within the meaning of the Act concerning unemployment insurance, means the legal place of residence as defined in article 32 of the Act relating to Individuals and Companies *(Personer-und Gesellschaffsrecht)* of 20 January 1926.

(2) The public employment exchange shall be at the disposal of foreign nationals who have a place of residence in Liechtenstein within the meaning of paragraph (1). In the event of unemployment, such persons shall not be subject to

[1] *Liechtensteinisches Landesgesetzblatt*, No. 4, of 30 January 1970.

[2] For extracts from the Act of 12 June 1969, see *Yearbook on Human Rights for 1969*, pp. 161, 162.

any restrictions imposed by the aliens' police with regard to the acceptance of a place of work, without prejudice to the regulations in force limiting the number of foreigners employed in individual businesses.

Article 8

During his temporary residence abroad an insured person may, provided he so requests in writing, continue to participate in the insurance scheme on a voluntary basis; he shall not, however, be entitled to claim any unemployment benefit during such a period.

II. MANDATORY INSURANCE

Article 9

(1) An enterprise shall be deemed to be established in Liechtenstein when it is mandatory for it to contribute on behalf of its employees to the Liechtenstein old age and dependants' insurance scheme.

(2) Any parts of such enterprises which are situated in neighbouring foreign territory shall be deemed to be established in Liechtenstein so long as they are not legally independent.

Article 10

Employers shall inform the Labour Department within one month of the dates on which wage-earners who are eligible to participate in the unemployment insurance scheme begin and end their period of employment. Longer periods of notice may be sanctioned by the Labour Department.

. . .

Part II

Unemployment benefits

I. CONDITIONS OF ENTITLEMENT

Article 12

Any person who is legally bound to participate in the insurance scheme or who, having applied, has been admitted to it, shall be deemed to be duly insured. In addition, voluntary participants must have paid contributions for the last six months prior to a period of unemployment.

. . .

LUXEMBOURG

GRAND DUCAL ORDER OF 3 DECEMBER 1970 CONCERNING THE ADMINISTRATION AND INTERNAL REGULATIONS OF PENAL INSTITUTIONS*

TITLE I

Penal institutions and reformatories

Chapter I

GENERAL PROVISIONS

. . .

Art. 2. In the context of this order, the expression "prisoners" shall refer to persons in respect of whom a measure involving deprivation of liberty has been taken and who are confined in a penal institution.

The expression "convicted prisoners" shall refer solely to convicted persons who have been sentenced by a court and whose sentence has become final.

The expression "untried prisoners" shall refer without distinction to all prisoners who are the object of criminal proceedings and who have not yet received a final sentence.

The expression "wards" shall refer to children covered by the laws on child protection.

Art. 3. In institutions established for the enforcement of sentences, prisoners shall be subject to the congregate system *(régime en commun)*.

However, the following shall be subject to the cell system or solitary confinement *(régime cellulaire)*:

(1) Untried prisoners;

(2) Convicted prisoners who, because of their physical or mental condition, are recognized to be unsuited to the congregate system.

The following may be subject to solitary confinement:

(1) Convicted prisoners who are thought to be dangerous;

(2) Convicted prisoners, as a disciplinary measure.

Art. 4. Wards in reformatories shall be subject to the congregate system.

Wards whose undisciplined behaviour requires that they should be kept in temporary isolation may be subject to solitary confinement.

Art. 5. Under the congregate system, prisoners and wards shall spend the day together in supervised groups and at night shall sleep singly in individual cells or rooms.

However, the use of dormitories or the sharing of rooms may be permitted if overcrowding makes it impossible for convicted prisoners or wards to be placed in individual cells.

Where, under exceptional arrangements, prisoners or wards are placed together in the same room, they must never be less than three in number.

The superintendent of the institution shall determine which persons may be placed together in common quarters or cells.

Art. 6. Under the solitary confinement system, prisoners and wards shall be separated from each other at all times of the day and night and shall communicate only with the staff of the institution and with duly authorized visitors.

. . .

Chapter II

VISITING

Art. 13. Members of the Chamber of Deputies shall have access to all places of detention provided that they first show proof of their capacity.

To enter an occupied individual room or to establish contact with specific prisoners, a special permit from the Minister for Justice shall be required.

Such visitors shall be accompanied by the superintendent of the institution or by his deputy.

Art. 14. The following shall also have free access to such institutions for the purpose of performing their functions or carrying out their duties: the *procureur général d'Etat* (chief public prosecutor) and his deputy, *procureurs d'Etat* (public prosecutors) and presidents of courts and tribunals, examining judges, the *auditeur général* (judge-advocate-general), and the *auditeurs mili-*

* *Mémorial*, No. 68, of 17 December 1970.

taires (judge advocates for the army), members of the prison administration and members of the Social Defence Institute.

Art. 15. Other visitors shall be permitted to enter penal institutions only with the written permission of the *procureur général d'Etat* or his deputy.

Visitors shall be accompanied by the superintendent of the institution or by an official designated by him for the purpose.

Unless specially authorized to do so by the *procureur général d'Etat* or his deputy, visitors may not enter dormitories or occupied individual rooms or establish contact with prisoners or communicate with any members of the prison staff other than those responsible for guiding them in the institution.

Art. 16. Visitors may be refused entry to an institution if there are serious reasons for such action. They may be expelled from an institution if their conduct is unseemly. In either event, the superintendent of the institution shall immediately inform the *procureur général d'Etat* or his deputy.

Art. 17. Articles 13 to 16 shall also apply to reformatories.

Children's judges shall have free access to reformatories and to the minor's quarters of detention.

...

TITLE III

Security

Chapter I

INTERNAL SECURITY OF PLACES OF DETENTION

Art. 104. The internal security of places of detention shall be the responsibility of the guards of the institution.

...

Chapter II

CONDITIONS OF ACCESS TO PLACES OF DETENTION

Art. 122. Subject to the provisions of articles 13, 14 and 18, no one who has no duties to perform shall be allowed to visit a place of detention without the prior authorization of the *procureur général d'Etat* or his deputy.

Unless expressly provided otherwise, such an authorization shall not bestow the right to communicate with prisoners in any manner, even in the presence of members of the prison staff.

Art. 123. No one who has no duties on the premises may enter an institution without first showing proof of his identity and capacity.

Identity papers presented by visitors who are not entitled by their position to be in the prison or who are not visiting it in the course of official duties may be retained and returned to them only at the time of their departure.

Art. 124. Unless specially authorized to do so by the *procureur général d'Etat* or his deputy, it shall be forbidden for visitors to take photographs inside the place of detention; this shall apply also to all sketches, motion pictures and sound recordings relating to detention.

...

Chapter III

INCIDENTS

Art. 126. The superintendent shall immediately inform the *procureur général d'Etat* or his deputy of any serious occurrence affecting the order, discipline or security of the institution or any act of violence between prisoners in a report describing the underlying causes of the incident and the circumstances in which it occurred, and also what measures have been or are to be taken to prevent any repetition of it.

Chapter IV

BIRTHS AND DEATHS

Art. 129. When the doctor establishes that a woman prisoner is pregnant, he shall draw up a medical certificate indicating the approximate date of her confinement and shall inform the superintendent. The latter shall immediately bring the woman's condition to the notice of the *procureur général d'Etat* or his deputy and, where appropriate, the authority responsible for her arrest.

The superintendent shall be obliged to follow the instructions given to him.

In an emergency, the superintendent himself shall order the prisoner to be transferred to the maternity hospital and shall inform the competent authorities of the action taken.

When a woman prisoner has given birth in the institution, the superintendent of the institution shall make the declaration of birth to the competent civil registrar, in accordance with articles 55 and 56 of the Civil Code.

Art. 130. When suicide has occurred or when there are signs or indications of violent death or when the cause of death is unknown or doubtful, the procedure laid down in article 81 of the Civil Code shall be followed.

In the event of an attempted suicide, the superintendent shall immediately summon the doctor of the institution.

In the event of a death, suicide or attempted suicide, the superintendent shall provide the information referred to in article 126.

The declaration of the death shall be made to the civil registrar in accordance with article 84 of the Civil Code. Any other action shall be taken in accordance with the procedure laid down in article 77 of the Civil Code.

The superintendent shall enter the death in the register of deaths.

...

TITLE IV

Detention

Chapter I

GENERAL RULES

Art. 143. Convicted prisoners shall be allotted to institutions and living quarters in accordance with the provisions of the prison régime to be applied to them, taking into consideration their sex, the reasons for their detention and, so far as possible, their age and previous record.

Persons sentenced to rigorous imprisonment and hard labour shall serve their sentence in the prison at Luxembourg. However, convicted male prisoners may be transferred to the agricultural penal centre at Givenich for the purposes of undergoing appropriate penological treatment.

Art. 144. The system applied to untried prisoners and persons held in custody at the temporary detention centre shall be different from that applied to convicted prisoners.

...

Chapter V

DISCIPLINE

Section I: Internal regulations

Art. 189. Every prisoner shall be subject to the rules governing all prisoners in the category to which he belongs.

According to their abilities and skills, convicted prisoners shall be equally entitled to such benefits and classifications as may be provided for in the institution's regulations.

No prisoner shall be treated differently because of prejudice based on race, colour, sex, language, religion, political or other opinions, national or social origin, wealth, birth or any other consideration.

The religious beliefs and moral precepts of the group to which the prisoner belongs shall be respected.

...

Section II: Discipline and duties of prisoners

Art. 195. Prisoners must obey all instructions pertaining to compliance with the regulations which may be given to them by the authorized officials and staff of the institution. They must observe the rules of courtesy in their conduct towards all members of the staff.

...

Section III: Punishment

Art. 207. No prisoner may be punished without having been informed of the offence with which he is charged and given the opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

...

Section IV: Rewards

Art. 218. In institutions set up for the enforcement of penalties, a system of rewards shall be established which shall vary according to categories of prisoner and methods of enforcing the penalty and which shall have as its purpose the encouragement of good conduct and the stimulation of effort on the part of prisoners.

Such rewards shall be granted by the superintendent.

The superintendent may also submit to the *procureur général d'Etat* or to his deputy proposals for the transfer, conditional release or pardon of prisoners as a reward, in particular on grounds of exemplary conduct.

...

Section V: Requests and complaints by prisoners

Art. 221. All prisoners may submit requests or complaints to the superintendent of the institution; the superintendent shall grant prisoners a hearing whenever there are valid grounds for such requests or complaints.

All prisoners may request to be heard by the judicial officers and public officials responsible for inspecting or visiting the institution without any member of the staff of the institution being present.

Art. 222. Any prisoner who objects to a decision of the superintendent of the institution may request it to be referred to the *procureur général d'Etat* or his deputy.

Notwithstanding this remedy, any decision taken under the powers defined by the regulations in force shall be immediately enforceable.

Art. 223. No complaints, requests or petitions may be submitted in a collective form...

Art. 224. Prisoners may at any time submit requests or complaints to the Ministry of Justice, the *procureur général d'Etat* and the Luxembourg judicial authorities.

...

Chapter VI

CONTACTS BETWEEN PRISONERS AND THE OUTSIDE WORLD

Art. 225. In order to facilitate the rehabilitation of prisoners on their release, special attention must be paid to the maintenance and improvement of their relations with their close relatives, in so far as such relations seem desirable in their mutual interest.

Section I: Correspondence

Art. 226. Unless forbidden to communicate with the outside world by the examining judge or deprived of the right to correspond with others as a disciplinary measure, and subject to the provisions of article 234, untried prisoners may write daily and without restriction to any person of their choice and may receive letters from any person.

Independently of the surveillance to which it is subject under articles 229, 230 and 231, their correspondence shall be transmitted to the judge responsible for the investigation of their case.

Art. 227. Within the limits prescribed in this Order, all convicted prisoners may correspond with their relatives by blood or by marriage, their guardian, spouse, brothers and sisters, uncles and aunts, and may receive letters from them.

Correspondence with other persons, except for those specified in article 234, shall require the authorization of the superintendent.

. . .

Art. 229. Letters sent to or by prisoners must be written in plain language and must not contain any conventional signs or characters.

Letters must deal only with subjects relating to family business or private interests which personally concern the correspondents and must not contain any allegation, threat or accusation or anything immoral or indecent.

Art. 230. Unless they have received permission from the superintendent to do otherwise, all prisoners must use the notepaper and plain envelopes provided for them free of charge by the prison administration.

Postal charges shall be paid by the sender.

Art. 231. With the exception of the correspondence referred to in article 235, the incoming and outgoing letters of all prisoners shall be read for the purposes of surveillance.

The sole aim of this surveillance shall be to safeguard the internal order of institutions of detention.

. . .

Art. 234. Exchange of correspondence between a prisoner and his Luxembourg counsel or between a prisoner of foreign nationality and the diplomatic or consular officials of his country shall be permitted at all times, even when, as a punishment, the prisoner has been deprived of the right to correspond with the outside world, unless the ban on communications has been imposed by the examining judge. Similarly, prisoners who are nationals of a State which has no diplomatic or consular representative in the country and prisoners who are political refugees or stateless persons shall be entitled to write to the diplomatic representative of the State attending to their interests or to any national or international authority responsible for protecting them.

Art. 235. Sealed letters sent from prisoners to their Luxembourg defence counsel or lawyers and vice versa shall not be subject to surveillance and shall be dispatched or delivered to the addressee without delay, provided that it can be established beyond doubt that the lawyer or counsel really is the intended recipient or the sender of the letters.

To this end, the envelope must be appropriately marked so as to indicate the profession and the business address of the addressee or the sender.

In addition to being marked "legal" *(courrier d'avocat)*, the envelopes of letters from defence lawyers or counsel must bear their signature; alternatively, such letters may be handed by them personally to the *procureur général d'Etat* or his deputy.

Section II: Visiting

1. *Visits by persons who do not belong to the administration*

Art. 236. Untried prisoners may receive visits from any person who is in possession of a visiting permit.

These permits shall be made out to the visitor and issued by the judge responsible for the preliminary investigation of the case; when the case is no longer in his hands, visiting permits shall be issued by the public prosecutor's office of the court which is to hear the case.

Unless otherwise indicated, a visiting permit shall be valid only for a half-hour visit on the day specified therein.

. . .

2. *Visits by lawyers*

Art. 249. Members of the Luxembourg bar shall be entitled to communicate freely, without supervision in a special visiting room during official working hours, with untried prisoners whom they are defending and with prisoners against whom extradition proceedings are in progress.

They may visit, under the same conditions, any convicted prisoner who has requested the visit in writing.

The prisoner's written request must be presented at the time of the visit.

...

3. *Maintenance of family ties*

Art. 253. Prisoners may be permitted to keep family photographs.

Art. 254. Unless deprived thereof as a disciplinary measure, prisoners may receive grants of money from the persons referred to in the first paragraph of article 227. This money shall be credited to their personal cash account and is intended for the purchase of supplies at the canteen.

Art. 255. No parcels may be sent or delivered to prisoners.

The only exceptions to this rule, which may be made only by special decision of the superintendent, are parcels of underwear, clothing for prisoners not required to wear prison uniforms, text books, religious articles and edifying and instructional books relating to their religious belief.

Permission may also be granted for charitable organizations to send food parcels on a collective basis to all prisoners or to groups of prisoners on public holidays.

Section IV: Special leave for family reasons

Art. 256. Prisoners who wish to marry during the period of their detention may obtain permission to comply with the necessary formalities and, if necessary, to leave the penal institution for the purposes of the marriage ceremony.

Application for such permission shall be made to the examining judge, in the case of untried prisoners, and to the *procureur général d'Etat* or his deputy, in the case of convicted prisoners.

Art. 257. The *procureur général d'Etat* or his deputy may grant convicted prisoners permission to visit a member of their immediate family who is seriously ill or who has died or to visit a wife who is about to give birth.

Permission to leave the institution may be granted for a period of no more than three days.

Such permission may be subject to the condition that the prisoner be accompanied by prison administration officials. The officials providing the escort shall not wear uniform.

Section V: Relations of prisoners with the outside world

Art. 258. Without prejudice to its seizure by the judicial authority, the release of written material prepared by a prisoner with a view to publication or disclosure in any form shall require the authorization of the examining judge, in the case of untried prisoners, and of the *procureur général d'Etat* or his deputy, in the case of convicted prisoners.

Art. 259. Prisoners shall be kept regularly informed of the most important events.

To that end, the superintendent may authorize prisoners to read daily newspapers and periodicals and to listen to radio broadcasts, taking into account the need not to interfere with the course of legal proceedings and to ensure security and good order in the institution.

Chapter VII

MAINTENANCE OF PRISONERS

Art. 260. All prisoners shall be maintained at the expense of the prison administration.

...

Section I: Food

Art. 261. Prisoners shall receive, at the customary times, meals which have sufficient nutritional value to ensure the maintenance of their health and strength.

...

Section II: Clothing and bedding

Art. 268. All prisoners who are not authorized to wear their own clothes shall receive a set of clothes appropriate to the climate and adequate to maintain them in good health.

...

Section III: Medical treatment

Art. 272. Sick prisoners shall receive, free of charge, any medical care they may require and shall be supplied with pharmaceutical products and specialities prescribed by the doctor of the institution.

...

Section IV: Personal hygiene

Art. 281. All prisoners shall be required to keep their persons clean.

...

Section V: Exercise

Art. 284. Part of the prisoners' time-table may be set aside for exercise under the supervision of an instructor.

...

Section VI: Spiritual assistance

Art. 286. All prisoners shall be permitted to satisfy the requirements of their religious life and to take part in religious observances organized for prisoners of their religion; if they so desire, they

may receive visits from a minister of the faith to which they belong.

Prisoners may also, on request, take part in observances and religious ceremonies of a faith other than that to which they have declared themselves to belong and may receive visits from a minister of that faith.

Prisoners who declare themselves not to profess a faith recognized by the State may, on the same conditions, receive moral assistance and visits from moral counsellors . . .

. . .

Art. 288. Prisoners may be authorized to receive or to keep in their possession religious articles and edifying and instructional books relating to their religious beliefs.

They shall have access to the library of religious works maintained by the chaplains of the different faiths.

. . .

Chapter VIII

WORK AND REMUNERATION OF PRISONERS

Section I: Work

Art. 299. All convicted prisoners shall have the right to work unless deprived thereof as a disciplinary measure.

Untried prisoners may be allowed to work if they so request; they shall be given occupation to the extent that the prison administration is able to provide them with work appropriate to their level of education and compatible with the need to ensure the efficient administration of the institution.

Art. 300. Prison work shall be compulsory for prisoners convicted of a criminal or correctional offence *(condamnés criminels et correctionnels).*

Section II: Remuneration

Art. 312. Prisoners' remuneration shall consist of the share of the proceeds from their work allotted to them and the bonuses granted to them as rewards.

Prisoners' accounts shall be credited and debited with all amounts payable to or by them during the period of their detention, in accordance with the conditions laid down in regulations.

These amounts shall be recorded in the personal account of each prisoner.

. . .

Chapter IX

GENERAL AND VOCATIONAL TRAINING OF PRISONERS

Section I: Education

Art. 324. Prisoners shall have the opportunity to acquire or develop the knowledge they will need after their release to enable them to achieve better social adjustment.

To that end, the superintendents of institutions must promote, under the authority of the *procureur général d'Etat* or his deputy, the general and vocational training of prisoners.

Every facility compatible with discipline and security requirements shall be given to prisoners who wish to improve their vocational training.

. . .

Section II: Organized activities and leisure time

Art. 328. Educational meetings, study groups and any other activities consonant with the purpose described in article 324 may be organized by the superintendent with the possible assistance of outside persons if such persons have been authorized by the *procureur général d'Etat* or his deputy.

The same shall apply, *inter alia*, to lectures, film shows, stage productions and musical recitals.

Outside persons who take part in such events shall not be regarded as visitors within the meaning of articles 15 and 16.

The superintendent shall determine which prisoners may attend these events.

. . .

Section III: Reading

Art. 332. There shall be maintained in each institution an appropriately stocked library whose contents shall be made available to prisoners according to their intellectual and moral level.

Such libraries shall be so arranged that the works which they contain permit the prisoners to improve their knowledge and their judgement and to follow a specialized training.

The newspapers and periodical publications which are allowed in the institution shall form part of its library; the same shall apply to the works referred to in the second paragraph of article 288.

. . .

MADAGASCAR[1]

ACT No. 70-001, OF 23 JUNE 1970, APPROVING ACCESSION TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE OPTIONAL PROTOCOL TO THAT COVENANT[2]

Art. 1. Signature of the international Covenant on Civil and Political Rights and the Optional Protocol to that Covenant is hereby approved.

[1] Texts of Acts furnished by the Government of the Malagasy Republic.

[2] For the text of the Covenant and Protocol, see the *Yearbook on Human Rights for 1966*, pp. 442-452.

ACT No. 70-005, OF 23 JUNE 1970, RATIFYING THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS[3]

Art. 1. Ratification of the International Covenant on Economic, Social and Cultural Rights is hereby authorized, subject to the following reservation:

The Government of Madagascar states that it reserves the right to postpone the application of article 13, paragraph 2, of the Covenant, more particularly in so far as relates to primary education, since, while the Malagasy Government fully accepts the principles embodied in the said paragraph and undertakes to take the necessary steps to apply them in their entirety at the earliest possible date, the problems of implementation, and particularly the financial implications, are such that full application of the principles in question cannot be guaranteed at this stage.

[3] For the text of this Covenant, see the *Yearbook on Human Rights for 1966*, pp. 437-441.

ACT No. 70-013, OF 15 JULY 1970, ABROGATING ORDINANCE No. 62-062, OF 25 SEPTEMBER 1962 ON THE SUPPRESSION OF IDLENESS AND SUBSEQUENT TEXTS

Art. 1. Ordinance No. 62-062, of 25 September 1962, on the suppression of idleness and subsequent texts are hereby abrogated.

MALAYSIA

SEDITION ACT, 1948

Revised up to 1 December 1969 and date appointed for coming into force 14 April 1970*

...

3. (1) A "seditious tendency" is a tendency:

(a) To bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;

(b) To excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

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

(d) To raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State; or

(e) To promote feelings of ill-will and hostility between different races or classes of the population of Malaysia.

(2) Notwithstanding anything in sub-section (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency:

(a) To show that any Ruler has been misled or mistaken in any of his measures;

(b) To point out errors or defects in any Government or constitution as by law established or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

(c) To persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of the Ruler or governed by the Government as by law established; or

(d) To point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill-will and enmity between different races or classes of the population of Malaysia,

if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency.

(3) For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency.

4. (1) Any person who:

(a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

(b) Utters any seditious words;

(c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) Imports any seditious publication,

shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding 18 months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

5. (1) No prosecution for an offence under section 4 shall be begun except within six months after the offence is committed:

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* Text published in *His Majesty's Government Gazette*, Supplement No. 1, of 9 April 1970.

Provided that for the purposes of this subsection a prosecution shall be deemed to be begun against any person when a warrant or summons has been issued in respect of any charge made against that person and based on the facts or incident in respect of which the prosecution afterwards proceeds.

(2) No person shall be prosecuted for an offence under section 4 without the written consent of the Public Prosecutor. In such written consent the Public Prosecutor may designate any court within Malaysia to be the court of trial.

6. (1) Notwithstanding anything to the contrary contained in the Evidence Ordinance, no person shall be convicted of an offence under section 4 on the uncorroborated testimony of one witness.

(2) No person shall be convicted of any offence referred to in section 4 (1) *(c)* or *(d)* if the person proves that the publication in respect of which he is charged was printed, published, sold, offered for sale, distributed, reproduced or imported (as the case may be) without his authority, consent and knowledge and without any want of due care or caution on his part, or that he did not know and had no reason to believe that the publication had a seditious tendency.

7. Any person to whom any seditious publication is sent without his knowledge or privity shall forthwith as soon as the nature of its contents has become known to him deliver the publication to the officer in charge of a police district or, in Sabah and Sarawak, to an administrative officer or to the officer in charge of the nearest police station, and any person who complies with the provisions of this section shall not be liable to be convicted for having in his possession that publication:

Provided that in any proceedings against that person the court shall presume until the contrary be shown that the person knew the contents of the publication at the time it first came into his possession.

8. (1) A Magistrate may issue a warrant empowering any police officer, not below the rank of Inspector, to enter upon any premises where any seditious publication is known or is reasonably suspected to be and to search therein for any seditious publication.

(2) Whenever it appears to any police officer not below the rank of Assistant Superintendent that there is reasonable cause to believe that in any premises there is concealed or deposited any seditious publication, and he has reasonable grounds for believing that, by reason of the delay which would be entailed by obtaining a search warrant, the object of the search is likely to be frustrated, he may enter and search the premises as if he were empowered to do so by a warrant issued under subsection (1).

9. (1) Whenever any person is convicted of publishing in any newspaper matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters:

(a) Prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order, the future publication of that newspaper;

(b) Prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of that newspaper from publishing, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service, or otherwise in the publication, editing, or production of any newspaper; and

(c) That for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.

(2) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both.

(3) Nothing in this Act shall affect the power of the court to punish any person contravening an order made under this section for contempt of court:

Provided that no person shall be punished twice for the same offence.

10. (1) Whenever on the application of the Public Prosecutor it is shown to the satisfaction of the court that the issue or circulation of a seditious publication is or if commenced or continued would be likely to lead to unlawful violence, or appears to have the object of promoting feelings of hostility between different classes or races of the community, the court shall make an order (in this section called a "prohibition order") prohibiting the issuing and circulation of that publication (in this section called a "prohibited publication") and requiring every person having any copy of the prohibited publication in his possession, power, or control forthwith to deliver every such copy into the custody of the police.

(2) An order under this section may be made *ex parte* on the application of the Public Prosecutor in chambers.

(3) It shall be sufficient if the order so describes the prohibited publication that it can be identified by a reasonable person who compares the prohibited publication with the description order.

(4) Every person on whom a copy of a prohibition order is served by any police officer shall forthwith deliver to that police officer every

prohibited publication in his possession, power, or control, and, if he fails to do so, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both.

(5) Every person to whose knowledge it shall come that a prohibited publication is in his possession, power, or control shall forthwith deliver every such publication into the custody of the police, and, if he fails to do so, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both.

(6) The court may, if it thinks fit, either before or after or without service of the prohibition order on any person, issue a warrant authorising any police officer not below the rank of Inspector to enter and search any premises specified in the order, and to seize and carry away every prohibited publication there found, and to use such force as may be necessary for the purpose. A copy of the prohibition order and of the search warrant shall be left in a conspicuous position at every building or place so entered.

(7) The owner of any prohibited publication delivered or seized under this section may, at any time within 14 days after the delivery or seizure, petition the court for the discharge of the prohibition order, and the court, if on the hearing of the petition it decides that the prohibition order ought not to have been made, shall discharge the order and shall order the prohibited publication delivered by or seized from the petitioner to be returned to him.

(8) Every prohibited publication delivered or seized under this section with respect to which a petition is not filed within the time aforesaid or which is not ordered to be returned to the owner shall be deemed to be forfeited to the Federal Government.

(9) For the purposes of this section "court" means the High Court.

11. Any police officer not below the rank of Inspector may arrest without warrant any person found committing or reasonably suspected of committing or of having committed or of attempting to commit or of procuring or abetting any person to commit any offence against this Act, or reasonably suspected of the unlawful possession of any thing liable to forfeiture thereunder.

MAURITANIA

ACT No. 70-030 OF 23 JANUARY 1970 AMENDING CERTAIN ARTICLES OF THE LABOUR CODE*

Art. 1. The last paragraph of article 1 of Book III of the Labour Code is replaced by the following provisions:

Persons carrying on the same trade, similar crafts or allied trades associated with the preparation of specific products, or the same profession, shall be free to form a single trade union by category of persons as defined above. Every worker or employer shall be free to join the trade union of his own trade or profession.

Art. 2. The first paragraph of article 3 of Book III is replaced by the following provisions:

Any physical person of either sex and any incorporated body shall be free to join the trade union of the trade or occupation of the person or body concerned.

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* *Journal officiel de la République islamique de Mauritanie*, No. 271, of 28 January 1970. For a summary of the Labour Code, see the *Yearbook on Human Rights for 1963*, p. 211.

MAURITIUS

THE MAURITIUS CITIZENSHIP (AMENDMENT) ACT, 1970

Act No. 12 of 1970, to amend the Mauritius Citizenship Act, 1968

Assented to on 30 April 1970 but not yet put into force[1]

2. Section 5 of the principal Act shall have effect as if the following subsection were added thereto:

(3) Notwithstanding the provisions of subsection (1) of this section, it shall be lawful for the Minister to cause any Commonwealth citizen to be registered as a citizen of Mauritius if he is satisfied that it is in the public interest so to do.

3. Section 9 of the principal Act shall have effect as if the following subsection were added thereto:

(5) Notwithstanding the provisions of this section, it shall be lawful for the Minister to grant a certificate of naturalisation to any alien or British protected person if he is satisfied that it is in the public interest so to do.

4. Section 18 of the principal Act shall have effect as if the following subsection were added thereto:

(4) Where any citizen of Mauritius born on or after the appointed day is also a national or citizen of some other country, his responsible parent or guardian shall, within ninety days of his birth, cause him to be registered in the appropriate register in such manner as may be prescribed: Provided that in the case of any person born before the commencement of this Act the registration may be made within 90 days of the commencement of this Act.

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[1] *Legal Supplement to the Government Gazette of Mauritius*, No. 29, of 2 May 1970 (for extracts from the Mauritius Citizenship Act, 1968, see *Yearbook on Human Rights for 1968*, pp. 282-284).

THE IMMIGRATION ACT, 1970

Act No. 13 of 1970, assented to on 30 April 1970 but not yet put into force[2]

...

3. Subject to this Act, no person may be admitted to Mauritius or, being within Mauritius, remain therein.

4. Subject to the provisions of this Act, a citizen, a resident or an exempted person, shall be allowed to enter Mauritius or, being in Mauritius, to remain therein so long as he holds his status of citizen, resident or exempted person, as the case may be.

5. (1) Subject to the next following section, any person, not being a citizen, shall have the status of a resident for the purposes of this Act if:

(a) In the case of a Commonwealth citizen, he has, before 14 December 1968, been ordinarily resident in Mauritius continuously for a period of seven years or more and since the completion of that period of residence has not been ordinarily resident continuously for a period of seven years or more, in any other country;

(b) In the case of an alien, he has, before 10 December 1966, been ordinarily resident in Mauritius continuously for a period of seven years or

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[2] *Ibid.*

more and has since the completion of that period of residence not been absent from Mauritius for a period of three years or more;

(c) He is the spouse of a citizen;

(d) He is a child, step-child or lawfully adopted child, under the age of 18 years, of a person to whom any of the preceding paragraphs applies;

(e) He is a person to whom permission has been granted by the Minister under subsection (2) of this section to become a resident;

(f) Holders of residence permits issued under section 9 of this Act;

(2) The Minister may grant permission to any person to become a resident if that person, not being a citizen:

(a) Is the parent or grand-parent of a citizen residing in Mauritius and that citizen is willing and able to provide for his care and maintenance;

(b) Is a person who satisfies the Minister that his maintenance and that of his family will be provided wholly from funds outside Mauritius; or

(c) Is a person, who in the opinion of the Minister, is a fit and proper person to become a resident..

6. (1) If, at any time, the Minister is satisfied that a resident:

(a) Is an habitual criminal within the meaning of section 207 of the Criminal Procedure Ordinance;

(b) Is a person who is mentioned in paragraphs *(i)*, *(j)* and *(k)* of section 8 (1),

he may, by order, deprive him of his status of resident.

(2) Where a person has acquired his status of resident under subsection (1) *(c)* of section 5, he shall cease, subject to subsection (6) of this section, to be a resident six months after the termination of the marriage to the citizen.

(3) Where a person has acquired his status of resident under subsection (1) *(d)* of section 5, he shall, subject to subsection (6) of this subsection, cease to be a resident on reaching the age of 18.

(4) Where a person has acquired his status of resident under subsection (1) *(e)* of section 5, he shall, subject to subsection (6) of this section, cease to be a resident if he voluntarily resides outside Mauritius for a continuous period of one year or more.

(5) Where a person has been deprived of his status of resident under subsection (1) of this section or has ceased to be a resident under subsections (2), (3) and (4) of this section, he shall be deemed to be a prohibited immigrant for the purposes of this Act and of the Deportation Act, 1968.

(6) It shall be lawful for the Minister to declare that the provisions of subsections (2), (3) or (4) of this section shall not apply to any person who makes application to him for the retention of his status of resident notwithstanding the loss of that status under any one of those subsections.

7. (1) Subject to section 8, the Immigration Officer may admit, on such conditions and for such period as he thinks fit in any particular case, the following persons or classes of persons, as the case may be, to Mauritius:

(a) Persons who are diplomatic or consular officers or representatives or officials, duly accredited to a country other than Mauritius, of the United Nations or any of its agencies or of any intergovernmental organization in which Mauritius participates, coming to Mauritius to carry their official duties or passing through in transit, or members of the families or suites of such persons;

(b) Members of any naval, army or air force who come to Mauritius in connection with the defence and security interests of Mauritius;

(c) Persons who come to Mauritius under the provisions of any treaty or agreement between Mauritius and another country and whose admission to Mauritius is approved by the Minister, together with such members of their families or suites as may be so approved;

(d) Persons appointed to the public service of Mauritius and the members of their families;

(e) Tourists or visitors;

(f) Persons passing through Mauritius in transit to another country;

(g) Students coming to Mauritius for the purpose of attending and, having entered Mauritius, are in actual attendance at any college or at the University of Mauritius;

(h) Persons who have been accepted as students by any educational or training establishment approved by the Minister of Education and Cultural Affairs and, having entered Mauritius, are in actual attendance at that educational or training establishment;

(i) Members of dramatic, artistic, cultural, athletic or other groups entering Mauritius or who, having entered, are in Mauritius for the purpose of giving performances or exhibitions of an entertaining or instructive nature;

(j) Members of crews entering Mauritius or who, having entered, are in Mauritius for shore leave or some other legitimate and temporary purpose;

(k) Shipwrecked persons;

(l) Such persons or classes of persons as the Minister may deem fit and proper.

(2) The Immigration Officer shall issue to a person admitted to Mauritius under paragraphs *(g)*, *(h)* and *(i)* of the preceding subsection a certificate stating the conditions subject to, and the period for, which the admission to Mauritius is authorized.

(3) It shall be lawful for the Immigration Officer, with the approval of the Minister, to vary the conditions attached to the admission of an exempted person to Mauritius or to extend or limit the period of his stay in Mauritius.

(4) Where, in the opinion of the Minister, an exempted person is a person described in section 8 (1) or a person who:

(a) Practises, assists in the practice of, or shares in the earnings from, prostitution or immorality;

(b) Has been convicted of an offence and sentenced to a term of imprisonment for not less than six months;

(c) Has become an inmate of any reformatory or an hospital for mental diseases;

(d) Came to Mauritius with a false or improperly issued passport, visa or other document pertaining to his admission or by reason of any false or misleading information, force, stealth or fraudulent or improper means, whether exercised by himself or by any other person;

(e) Came to Mauritius as a member of a crew and, without the approval of the Immigration Officer or beyond the period approved by such officer, remains in Mauritius after the departure of the vessel on which he came to Mauritius;

(f) Came to Mauritius as an exempted person and remains in Mauritius after the expiration of the period for which he was authorised to stay or in breach of any conditions attached to his admission to Mauritius,

the Minister may, at any time, declare that he has ceased to be an exempted person and he shall thereupon be deemed to be a prohibited immigrant for the purposes of this Act and of the Deportation Act 1968.

8. (1) Except as provided in subsection (2), the following persons, other than citizens and, subject to section 6, residents, shall be deemed to be prohibited immigrants and shall not be admitted to Mauritius:

(a) Persons who appear to the Immigration Officer to be suffering from any physical or mental infirmity and who are likely to be a charge on public funds;

(b) Persons afflicted with any infectious or contagious disease;

(c) Persons who are dumb, blind or otherwise physically defective or physically handicapped and who are likely to be a charge on public funds;

(d) Persons who have been convicted of or admit having committed any crime which, if committed in Mauritius, would be punishable by imprisonment for a period of not less than six months;

(e) Prostitutes or persons living on the earnings of prostitutes or persons reasonably suspected as coming to Mauritius for those or any other immoral purposes;

(f) Habitual beggars or vagrants;

(g) Persons who are likely to become a charge on public funds;

(h) Persons who are chronic alcoholics;

(i) Persons who are addicted to any drug or reasonably suspected of engaging in the traffic of drugs;

(j) Persons who are engaged, or reasonably suspected of engaging in activities prejudicial to the integrity or sovereignty of Mauritius or of any friendly state;

(k) Persons concerning whom there are reasonable grounds for believing they are likely to engage in any subversive activity of any kind whatsoever directed against Mauritius or detrimental to the security of Mauritius or any friendly state.

(2) The Minister may authorize in writing, under his hand or under the hand of a person designated by him, the admission to Mauritius of any person described in paragraphs *(a)* to *(k)* of the preceding subsection.

(3) The Minister may attach such conditions as to him may seem fit to the admission of the persons mentioned in the last preceding subsection.

9. (1) The Minister may issue, subject to such conditions as he thinks fit to impose, a written permit, in this Act referred to as a "residence permit", authorizing any person other than an exempted person to enter Mauritius or, being in Mauritius, to remain therein.

(2) A residence permit shall be expressed to be in force for a specified period and shall also specify the conditions subject to which it is issued.

(3) The Minister may at any time, in writing, extend, vary or cancel a residence permit.

(4) Upon the cancellation or expiration of a residence permit or upon failure to comply with any of the conditions subject to which it has been issued, the holder thereof shall be deemed to be a prohibited immigrant for the purposes of this Act and of the Deportation Act, 1968.

(5) Any period of residence in Mauritius in pursuance of a residence permit shall be taken into account for the purpose of the Citizenship Act, 1968.

...

11. (1) Where a minor has been admitted to Mauritius under the charge of any person and, at any time thereafter, the presence of that minor in Mauritius becomes unlawful by virtue of any of the provisions of this Act, the Immigration Officer may require that person to make such arrangements as may seem suitable to the Immigration Officer to ensure the departure of the minor from Mauritius within such time as the Immigration Officer may determine.

(2) Where a minor has been admitted to Mauritius under the charge of any person and, at any time thereafter, the Immigration Officer is informed that such person is about to leave Mauritius without the minor, it shall be lawful for the Immigration Officer, by order, to require that person to make such arrangements as may seem suitable to the Immigration Officer to ensure the departure of the minor from Mauritius within such time as the Immigration Officer may determine, and to provide for the care and maintenance of the minor until his departure from Mauritius.

(3) It shall be lawful for the Immigration Officer to take such measures as may be necessary to prevent the person to whom an order made under the last preceding subsection is directed

from leaving Mauritius until the order has been complied with.

12. (1) Every person, including citizens and residents, seeking admission to Mauritius shall first appear before the Immigration Officer at a port of entry for examination as to whether or not he should be admitted to Mauritius.

...

13. (1) Where the Immigration Officer, after the examination of a passenger seeking admission to Mauritius, is of opinion that it would be contrary to the provisions of this Act or regulations made thereunder to grant admission to that passenger to Mauritius he may:

(a) Refuse to admit the passenger to Mauritius and thereupon the passenger shall be kept in custody until the departure of the vessel, and, subject to subsection (2) of this section, the Immigration Officer shall order the master of the vessel to remove the passenger when leaving Mauritius;

(b) Cause the passenger to be detained pending the decision of the Minister; or

(c) Grant provisional admission to the passenger upon such conditions, including the deposit of a sum of money or other security, as he thinks fit to impose.

(2) Where a passenger who is detained under paragraph *(a)* of the preceding subsection claims to be a citizen or resident, the Immigration Officer shall not order his removal but shall forthwith refer the matter to the Minister for his decision.

(3) Where the Immigration Officer has detained any passenger who has sought admission to Mauritius or has been granted provisional admission under paragraphs *(b)* and *(c)*, respectively, of the preceding subsection, the Immigration Officer shall forthwith refer the matter to the Minister for his decision.

(4) Where the Minister is of opinion that the passenger is a prohibited immigrant or that he should not be issued with a residence permit, the Immigration Officer shall:

(a) If the passenger is already detained, order the transport company of the vessel in which the passenger arrived in Mauritius to remove him within a stated time to the country of which he is a citizen or national or in which he embarked for Mauritius or to a country to which there is reason to believe that he will be admitted;

(b) If the passenger has been admitted provisionally, require him to leave Mauritius at the first available opportunity and if he fails to do so the Immigration Officer shall, without the issue of a warrant, arrest and detain him and the provisions of the preceding paragraph shall apply to him as if he had throughout been detained.

(5) Where the Minister is of opinion that the passenger detained or admitted provisionally in Mauritius under paragraphs *(b)* and *(c)*, respectively, of subsection (1) of this section is not a prohibited immigrant and that he is a fit and proper person, he may issue a residence permit to him and thereupon he shall be admitted to Mauritius in accordance with, but subject to, the provisions of this Act.

(6) The provisions of this section shall apply notwithstanding anything contained in the Deportation Act, 1968, and the decision of the Minister shall be final and conclusive and shall not be questioned in any court of law:

Provided that where a passenger to whom the Minister has refused admission to Mauritius claims to be a citizen or a resident, an appeal shall lie to the Supreme Court against the decision of the Minister and the appeal shall be heard and determined as expeditiously as circumstances warrant in accordance with such rules as may be prescribed by the Chief Justice.

...

20. Any person who is detained by virtue of any of the provisions of this Act shall, whilst being detained and whilst being conveyed for the purpose of being removed from Mauritius, be deemed to be in lawful custody.

...

THE EMPLOYMENT (NON-CITIZENS) (RESTRICTION) ACT, 1970

Act No. 15 of 1970, assented to on 30 April 1970[3]

...

3. (1) Subject to the provisions of this Act, a non-citizen shall not:

(a) Engage in any occupation in Mauritius for reward or profit; or

(b) Be employed in Mauritius,

unless there is in force in relation to him a valid work permit and he so engages in the occupation or is so employed in accordance with the conditions which may be specified in the permit.

(2) A non-citizen who at the commencement of this Act is engaging in any occupation in Mauritius for reward or profit or is employed in Mauritius shall be exempt from the provisions of the preceding subsection until:

(a) He ceases so to engage or to be employed; or

(b) The expiration of four months after the commencement of this Act,

whichever shall first occur.

[3] *Ibid.*

(3) Subject to the provisions of this Act, no person shall have in his employment in Mauritius a non-citizen without there being in force a valid work permit in relation to that employment.

(4) Subject to the provisions of this Act:

(a) Any non-citizen who engages in any occupation in Mauritius or is employed in Mauritius in contravention of the provisions of subsection (1) of this section; and

(b) Any person who has in his employment in Mauritius a non-citizen in contravention of the provisions of subsection (3) of this Act,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand rupees and to imprisonment not exceeding twelve months.

(5) A non-citizen who:

(a) Is a resident; and

(b) Was engaged in any occupation or was employed in Mauritius at the date of the commencement of this Act,

may, notwithstanding the provisions of subsections (1) and (2) of this section, engage in any occupation for reward or profit or be employed without a work permit so long as he is living in Mauritius.

4. (1) An application for a work permit shall be addressed to the Minister who may, in his absolute discretion, either grant or refuse it.

...

(4) The Minister may, in writing, at any time vary or cancel a work permit.

5. (1) It shall be lawful for the Immigration Officer, any Police Officer or any other public officer authorized in writing by the Minister to take such steps as may be required to secure compliance with the provisions of this Act.

(2) Where an authorized officer, other than a Police Officer in uniform, exercises any of his powers under this Act he shall, if so required, produce a certificate of his authority so to act.

...

7. The Minister may prescribe that any person or class of persons shall be exempt either unconditionally or subject to such conditions as may be prescribed from all or any of the provisions of this Act.

...

9. (1) It shall be presumed upon the trial of any person for a contravention of subsection (1) of section 3 that the accused is a non-citizen unless the contrary is proved.

(2) It shall be presumed upon the trial of any person for a contravention of subsection (3) of section 3 that the person alleged to have been in employment in contravention of that subsection is a non-citizen unless the contrary is proved.

(3) In any proceedings against a non-citizen under this Act the proof that he satisfies the requirements of paragraphs *(a)* and *(b)* of subsection (5) of section 3 shall lie upon him.

...

THE HOLDING OF LANDS (RESTRICTION) ACT, 1970

Act No. 34 of 1970, assented to on 1 July 1970[4]

...

3. Subject to the provisions of this Act, it shall not be lawful for any non-citizen to purchase or otherwise acquire or hold any immovable property within Mauritius.

4. (1) Any non-citizen may purchase or otherwise acquire or hold any immovable property within Mauritius if he has obtained a certificate from the Minister consenting to the purchase, acquisition or holding of the immovable property:

Provided that the certificate shall not be required in the case of a non-citizen who holds an immovable property in virtue of a lease for a term not exceeding, in the aggregate, six months in any calendar year.

(2) A certificate under subsection (1) shall be in writing and shall specify the immovable property to which the consent relates.

5. The provisions of section 3 of this Act shall not apply in relation to any person:

(a) Who is authorized to purchase or otherwise acquire or hold any immovable property within Mauritius by virtue of the provisions of any enactment for the time being in force or any convention to which Mauritius is a party;

(b) Who acquires the immovable property by inheritance after the commencement of this Act.

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[4] Text furnished by the Government of Mauritius.

6. Nothing contained in this Act shall affect the right of any non-citizen to any immovable property within Mauritius if that right has been lawfully vested in him before the commencement of this Act.

7. The Order-in-Council of 15 January 1842, relating to the prohibition on the purchase, acquisition or holding of land by aliens is hereby revoked.

MEXICO*

1. Federal Labour Act (*Diario Oficial*, vol. CCXIX, No. 26, of 10 April 1970).

2. Decree promulgating the Cultural Agreement between the United Mexican States and the Republic of Korea (*ibid.*, vol. CCXCIX, No. 50, of 29 April 1970).

3. Decree promulgating the Agreement on Cultural and Scientific Exchanges between the United Mexican States and the Union of Soviet Socialist Republics (*ibid.*, vol. CCCI, No. 34, of 8 August 1970).

4. Regulation contained in article 57 of the Nationality and Naturalization Act (*ibid.*, vol. CCI, No. 36, of 11 August 1970). Extracts from the regulation appear below.

5. Decree approving the Agreement between the United Mexican States and the United States of America Concerning Radio Broadcasting in the Standard Broadcasting Band (535-1605 kHz) (*ibid.*, vol. CCCII, No. 29, of 5 October 1970).

6. Decree approving the Agreement between the United Mexican States and the United States of America concerning the operation of broadcasting stations in the standard band (535-1605 kHz) during a limited period prior to sunrise ("pre-sunrise") and after sunset ("post-sunset") *(ibid.)*.

7. Decree approving six amendments to the International Convention for the Safety of Life at Sea, 1960, adopted on 25 October 1967 by the Assembly of the Inter-governmental Maritime Consultative Organization *(ibid.)*.

8. Decree approving the Convention on the Privileges and Immunities of the Agency for the Prohibition of Nuclear Weapons in Latin America (OPANAL) (*Diario Oficial*, vol. CCCII, No. 49, of 29 October 1970).

9. Decree promulgating the text of the Cultural Exchange Agreement between the United Mexican States and the Italian Republic *(ibid.)*.

10. Decree approving the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*Diario Oficial*, vol. CCCIII, No. 12 of 14 November 1970).

11. Decree extending to officials and employees of the National Cancer Research Institute the coverage provided under the Government Employees' Social Security and Services Institute Act (*ibid.*, vol. CCCIII, No. 14 of 17 November 1970).

12. Decree approving the Treaty of Co-operation between the United Mexican States and the United States of America providing for the recovery and return of stolen archaeological, historical and cultural properties, signed at Mexico City on 17 July 1970 (*ibid.*, vol. CCCIII, No. 17 of 21 November 1970).

13. Decree approving the Cultural Agreement between the Government of the United Mexican States and the French Republic, signed in Paris on 17 July 1970 *(ibid.)*.

14. Agreement extending to employees of the Mexican Child Welfare Institute (Institución Mexicana de Asistencia a la Niñez), a decentralized public body, the coverage provided under the Government Employees' Social Security and Services Institute Act *(ibid.)*.

15. Decree establishing the National Commission on Arid Regions, an agency to promote the development of the arid regions of the country (*Diario Oficial*, vol. CCCIII, No. 28, of 5 December 1970).

16. Federal National Cultural Heritage Act (*ibid.*, vol. CCCIII, No. 37, of 16 December 1970). Extracts from the Act appear below.

17. Amendments to the Social Insurance Act (*ibid.*, vol. CCCIII, No. 49, of 31 December 1970). Article 1 of the Act, as amended, reads as follows:

> "Social insurance shall constitute a national public service and shall be compulsory under the terms of this Act and its regulations.
>
> "The compulsory insurance scheme is instituted in order to guarantee the human right to health, medical care, income protection and the social services necessary for individual and social well-being."

* Note and texts of laws furnished by the Government of Mexico.

REGULATIONS PURSUANT TO ARTICLE 57 OF THE NATIONALITY AND NATURALIZATION ACT

Art. 1. Mexicans born abroad of a Mexican father or mother or those born in Mexico of a foreign father or mother, must establish their Mexican nationality by means of a certificate issued by the Secretariat for External Relations.

Art. 2. Applications for the issue of Mexican nationality certificates, together with the data and documents necessary in each case, shall be submitted to the Secretariat by the persons concerned, directly if they have attained 18 years of age, or by the person acting as parent or guardian.

A person under 18 years of age must, within the year following the attainment of his majority, confirm any disclaimers that may have been made on his behalf.

Art. 3. The Secretariat for External Relations shall issue Mexican nationality certificates to any person who makes the disclaimers and declarations referred to in articles 17 and 18 of the Nationality and Naturalization Act.

Art. 4. In accordance with the provisions of article 1 and in the case of all instruments for which, if they are to be valid, Mexican nationality is required, lawyers, public registrars and other authorities shall, in matters relating to their respective fields of competence, require the appropriate nationality certificate.

Art. 5. Without prejudice to any penalties which may be imposed in accordance with the law, the competent authority, depending on the nature of the instruments, may declare those executed in violation of these regulations to be null and void unless the person concerned obtains the Mexican nationality certificate within a period of time to be fixed by the authority. The nullity shall in no case prejudice third persons acting in good faith.

FEDERAL ACT CONCERNING THE NATION'S CULTURAL HERITAGE

CHAPTER I

Preliminary provisions

Art. 1. It is in the public interest to protect, conserve, retrieve and enhance the nation's cultural heritage.

Art. 2. The nation's cultural heritage consists of all property of cultural value from the point of view of art, history, tradition, science or technology, under the terms of this Act.

Art. 3. For the purposes of this Act, the following are considered to be property of cultural value:

I. Archaeological, historical and artistic monuments, movable and immovable property;
II. Important or rare manuscripts, incunabula, editions, books, documents, publications, periodicals, maps, charts, pamphlets and pictures and collections thereof;
III. Scientific and technological collections;
IV. Items of ethnological, anthropological and palaeontological interest;
V. Typical specimens of flora and fauna;
VI. Museums and collections of weapons;
VII. Numismatic and philatelic museums and collections;
VIII. Official archives;
IX. Musical archives;
X. Discs, films, photographical archives, recording tapes and any other object of cultural interest containing pictures or sounds;
XI. Typical or picturesque sites;
XII. Natural beauty spots; and
XIII. Any other property of such national interest as to be included in the cultural heritage.

...

MONACO

SOVEREIGN ORDINANCE No. 4409 OF 21 FEBRUARY 1970 GIVING EFFECT TO ACT No. 871 OF 17 JULY 1969 INTRODUCING PUBLIC ASSISTANCE ALLOWANCES FOR TEMPORARILY AND INVOLUNTARILY UNEMPLOYED WORKERS[1]

Pursuant to Act No. 871 of 17 July 1969,[2] introducing public assistance allowances for temporarily and involuntarily unemployed workers;

SECTION I

Allowance for complete unemployment

Article 1

Loss of employment determining eligibility for public assistance allowances must, under article 2, paragraph 1 of the above-mentioned Act No. 871 of 17 July 1969, be the result of dismissal or voluntary departure of the wage-earner for legitimate reasons.

However, provided that they are registered as seeking employment, the wage-earners of an enterprise which has ceased all activity for over four weeks shall be deemed to have lost their employment, even though no notice of dismissal was given.

Article 2

The employment the complete loss of which determines eligibility for public assistance allowances must, under article 2, paragraph 3, of the above-mentionned Act No. 871 of 17 July 1969, involve regular work with normal remuneration, exclusive of any kind of supplementary income.

. . .

Article 6

In cases where a lock-out lasts more than three days, the decision to authorize payment of the allowance provided for in article 5, paragraph 4, of the above-mentioned Act No. 871 of 17 July 1969 shall be taken by the Minister of State, on the proposal of the Director of Labour and Social Affairs, taking into account the actual events and the reasons for the lock-out.

. . .

SECTION III

Common provisions

Article 12

A decision to refuse payment of the public assistance allowance may be contested by a non-contentious appeal which, in order to be admissible, must be lodged with the Minister of State within two weeks from the date of the receipt of the notification of the above-mentioned decision.

The appeal shall be submitted to a Commission consisting of, in addition to the Director of Labour and Social Affairs, an equal number of employers and wage-earners appointed by Ministerial Decree on the nomination of employers' and workers' associations.

. . .

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[1] *Journal de Monaco*, No. 5,866, of 27 February 1970.

[2] Extracts from Act No. 871 of 17 July 1969 appeared in the *Yearbook on Human Rights for 1969*, p. 179.

ACT No. 886 OF 25 JUNE 1970 CONCERNING THE CAPACITY OF THE MARRIED WOMAN, MODIFYING THE LEGAL MATRIMONIAL REGIME, INSTITUTING MUTABILITY OF MATRIMONIAL AGREEMENTS AND ABROGATING AND AMENDING CERTAIN PROVISIONS OF CODES AND LAWS[3]

Article I

Chapters VI, VII and VIII of title V of book I of the Civil Code are amended as follows:

CHAPTER VI

The respective rights and duties of the spouses

Art. 181. It is the duty of the spouses to be faithful to, succour and assist each other.

Art. 182. The husband is the head of the family. He shall perform this function in the common interest of the household and children.

The wife shall co-operate with the husband in undertaking the moral and material charge of the family, providing for its maintenance, rearing the children and giving them a start in life.

The wife shall replace the husband in his functions as head of the family when he is unable to express his will.

Art. 183. Each spouse has full capacity. His or her powers are limited only by the rules of the matrimonial régime and the provisions of the law.

Art. 184. Each spouse shall have the power, without the other, to enter into contracts for the purpose of maintaining the household or educating the children; any debt so contracted by a spouse shall bind both spouses jointly and severally in so far as third persons in good faith are concerned.

Art. 185. In the absence of special provisions in their contract, the spouses shall contribute to the expenses of the marriage in proportion to their respective capabilities; if necessary, account shall be taken, in the contribution of each of them, of one spouse's activity in the home and assistance in the exercise of the other's profession.

Art. 186. A spouse who does not contribute to the household expenses shall be compelled to do so as laid down in article 817 of the Code of Civil Procedure.

Art. 187. The husband shall choose the household residence; the wife shall be obliged to live with him; he shall be obliged to receive her.

If the residence presents moral or physical dangers for the family, the family court judge may, exceptionally, authorize the wife to establish her residence and that of the children in a place to be stipulated by him.

Art. 188. The wife may engage in a profession of her own compatible with her matrimonial duties.

Irrespective of the matrimonial régime, she may, where it is required for this profession, alienate and bind the complete title to her separate property.

Art. 189. Each spouse shall appropriate his or her own earnings and wages and may dispose of them freely after the contribution of each to the household expenses has been paid.

Art. 190. Where one of the spouses is incapable of expressing his or her will for a long period of time, the other spouse may obtain legal authorization to represent him or her in the exercise of powers deriving from the matrimonial régime; the court shall establish the duration and terms and conditions of such representation.

The court may authorize a spouse to execute alone an instrument which normally could have been executed only with the co-operation or consent of the other spouse.

Art. 191. If, by gravely failing in his or her duties, one of the spouses jeopardizes the family interests, the family court judge shall prescribe any emergency measures which are necessary for the protection of such interests which may remain in effect for a period not exceeding three years. He may, in particular, prohibit the spouse in question from executing an instrument for the administration or disposal of personal or joint property without the consent of the other spouse; he may also prohibit removal of furniture, reserving the right ultimately to stipulate those pieces he may allocate for the personal use of one or other of the spouses.

Art. 192. At the suit of the petitioning spouse, a note shall be made of any order prohibiting disposal of property in the same way as any mortgage on the property would be registered. The note shall be deleted at the order of the family court judge and, in any case, automatically upon expiry of the established time-limit.

The respondent shall notify his or her spouse of any order prohibiting disposal or removal of tangible personal property; such notification shall render the spouse custodian of the property in the same way as an attachment. Any destruction, any misappropriation, any attempted destruction or misappropriation shall be penalized under the terms of article 324 of the Penal Code.

[3] *Journal de Monaco*, No. 5,883 of 26 June 1970.

A third party who has knowledge of the measure ordered may no longer avail himself of the presumption of good faith.

Art. 193. Instruments executed in violation of the order provided for in article 191 may be annulled at the request of the plaintiff when concluded with a third party acting in bad faith.

In the case provided for in the first paragraph of the preceding article, annulment shall be possible if the instruments are executed after the note referred to in that text has been made.

Under pain of inadmissibility, any actions shall be brought within the year in which the instrument becomes known or, in the case of the property referred to in the preceding paragraph, within the year of the note being made.

Art. 194. Either spouse may open a deposit or securities account without the consent of the other spouse. He or she shall, with respect to the depositary, be free to dispose of funds and securities deposited.

A spouse who owns personal property shall have, with respect to third parties acting in good faith, the power to execute individually an instrument for the administration, use or disposal of such property.

Art. 195. The provisions of this chapter shall be applicable, the spouses' matrimonial régime notwithstanding.

CHAPTER VII

The dissolution of the marriage

Art. 196. The marriage shall be dissolved: (1) by the death of either spouse; (2) by divorce.

CHAPTER VIII

Second marriages

Art. 197. A widow may not contract a new marriage until 300 days have elapsed since the death of her husband; a confinement occurring during this period shall put an end to the impediment.

A divorced woman may remarry after the registration of the divorce judgement if 300 days have elapsed since the order fixing the separate residences of the spouses.

Art. 198. The time-limits laid down in the preceding article may be waived by a decision of the court of first instance, given on request, in cases where at least 300 days have elapsed since the wife cohabited with her previous husband.

Article 2

Articles 64, 141, 657, 951, 979, 980, 1,152, 1,159 and 1,779 of the Civil Code are amended as follows:

Art. 64. When the time-limits for publication have elapsed, the civil registrar shall perform the marriage in the town hall, on a day appointed by the future spouses, in the presence of at least two witnesses; he shall read out the above-mentioned documents relating to their status and the formalities of the marriage, as well as articles 181, 182, 185 and 187, first paragraph, of this Code.

However, where there is a serious reason preventing one of the future spouses from attending, the *procureur général* may authorize the civil registrar to visit the domicile or residence of one of the parties for the purpose of performing the marriage. If one of the future spouses is in imminent danger of death, the civil registrar may visit the domicile or residence before receiving the authorization of the *procureur général,* provided he informs the latter without delay that he has done so. Mention of the authorization, where applicable, and of the means of transport, shall be made in the certificate.

On being questioned by the civil registrar, the future spouses and persons authorizing the marriage, present at its celebration, shall state whether a contract of marriage has been drawn up. If the answer is in the affirmative, the persons making the statement shall indicate the date of the contract, and the name and residence of the notary who received it.

When one or both of the future spouses are aliens and state that they have not drawn up a marriage contract, the legal system shall be applicable unless, on being questioned by the civil registrar, they stated that they would be subject to the legal system of the country of which one or both of them is a national.

The spouses shall in turn declare to the civil registrar that they wish to take each other for man and wife. In the name of the law, he shall pronounce them joined in marriage and shall immediately draw up a certificate.

Art. 141. Any person bound by marriage to one of the future spouses may oppose celebration of the marriage.

Art. 657. Estates due to persons in wardship may not validly be accepted except in the conditions laid down in article 387.

Art. 951. Any donation between the spouses during the marriage, even though qualified as *inter vivos*, shall always be revocable.

Such donation shall in no case be revocable by the birth of issue.

Art. 979. Persons incapable of contracting are:

(1) Minors;

(2) Persons of age who are in wardship;

(3) All persons prohibited by law from entering into certain contracts.

Art. 980. Persons capable of assuming obligations may not take advantage of the incapacity of the other contracting party.

Art. 1,152. In all cases where a specific law does not impose a shorter time-limit for the institution of proceedings for nullification or rescission of an agreement, the time-limit shall be five years.

The time-limit shall run, in the case of violence, only from the date of cessation of the violence; in case of error or fraud, only from the date of their discovery.

In case of incapacity, it shall run:

In the case of the incapable person, from the date on which, having acquired or regained his full capacity, he became aware of the instrument in question;

In the case of the heirs of the incapable person, from the date of his death, if it has not started to run earlier.

Art. 1,159. An incapable person who, as such, is permitted to obtain release from his obligations shall not be required to return anything he may have received, unless he has profited therefrom.

Art. 1,779. If there has been a change in the status of the depositor, particularly if the wife has married under a community system whereby the husband is responsible for administering the property deposited, or if a person of age is rendered incapable, the deposit may be returned only to the person responsible for administering the depositor's property.

Article 3

An article 65-1, reading as follows, is inserted at the end of chapter III of title II of book I of the Civil Code:

Art. 65-1. If the marriage certificate shows that the spouses were married without a contract, the powers of the spouses shall be, with respect to third parties, those deriving from the legal system, unless the marriage contract is revealed in legal instruments concluded with the third parties.

Article 4

Title V of book III of the Civil Code is modified as follows:

Title V

The marriage contract and of matrimonial régimes

Chapter I

GENERAL PROVISIONS

Art. 1,235. The law regulates the marital relationship with respect to property only in the absence of special agreements.

Spouses who have not made a contract shall be subject to the separation of property system provided for in chapter II of this title.

Art. 1,236. Spouses may make their matrimonial agreements as they deem fit.

However, they may not derogate from rules relating to public policy and morality, particularly their rights and duties under their marriage, rules relating to paternal authority, legal administration or guardianship and, subject to the exceptions provided for in this Code, rules determining the legal order of succession.

...

Chapter II

THE SEPARATION OF PROPERTY RÉGIME

Art. 1,244. Under the separation of property régime each spouse is free to administer, enjoy and dispose of his or her property.

Art. 1,245. Subject to the provisions of article 184, each spouse shall settle, individually, any debts incurred on his or her responsibility.

Art. 1,246. Each spouse shall be presumed to own any clothing, effects, linen and jewels serving for his or her personal use.

In the absence of evidence to the contrary obtained by any means, any other movable property, including money and bearer bonds, in the matrimonial domicile or in the spouse's various residences, shall belong to them jointly, unless there is reason, in this connexion, to take account of the fact that one of the spouses is sole holder of the right to the premises in which the spouses have established their domicile or residence.

...

Chapter III

PROVISIONS RELATING TO COMMUNITY RÉGIMES

Section I

GENERAL PROVISIONS

Art. 1,250. During the marriage, the wife shall exercise, over property acquired through her indi-

vidual professional work, the same powers as the husband over the common property.

The origin and nature of the property shall be proved, with respect both to third persons and to the husband, in writing, in particular, by registers, domestic papers, invoices or bank documents and, if it is materially or morally impossible to obtain a document, by witnesses or presumptions.

Art. 1,251. A wife who renounces the community régime shall retain the property acquired through her professional earnings and shall assume responsibility for any liabilities attributable to her professional activity.

Art. 1,252. If one of the spouses is unfit to exercise his or her rightful powers over common or individual property, or exercises them to the detriment of the rights of the other spouse, the latter may take legal action to replace him or her in the exercise of all or some of those powers.

The spouse thus empowered shall have the same powers as the spouse he or she is replacing, but shall conclude instruments for which the consent of both spouses would have been required only with the authorization of the family court judge.

The spouse who is deprived of his powers may request the court to restore them by proving that their transfer to the other spouse is no longer justified.

Art. 1,253. Instruments disposing of the joint property which are concluded by a spouse beyond his or her legal powers shall be annulled after the institution of proceedings by the other spouse. The action shall be brought within two years from the date on which the other spouse became aware of the instrument and may in no case be brought if two years have elapsed since the dissolution of the community régime.

Art. 1,254. If, through the fault of one of the spouses, they had ceased living together and collaborating before the community régime was legally dissolved, the other spouse may request that, in their mutual relationships, the effect of the dissolution should be retroactive to the date on which they had ceased to live together and collaborate.

Art. 1,255. Either spouse may legally request separation of property where his or her patrimonial interests are jeopardized and where disarray in the other spouse's affairs compromises their recovery.

...

Section II

SPECIAL PROVISION RELATING TO THE COMMUNITY RÉGIME WHEN ONE OR BOTH SPOUSES HAVE CHILDREN OF A PREVIOUS MARRIAGE

Art. 1,261. Where a spouse has children of a previous marriage, any agreement which would result in giving the other spouse more than the portion regulated by article 953 by way of donations *inter vivos* and wills, shall be ineffective for anything over and above that portion; however, the mere profits resulting from the joint work and savings accumulated on the respective, although unequal, incomes of the spouses shall not be deemed to constitute profits acquired to the detriment of children of a previous marriage.

...

Article 14

Articles 6 and 7 of the Commercial Code are amended as follows:

Art. 6. A married woman may be a tradeswoman in the conditions provided for by article 188 of the Civil Code.

Art. 7. Under community régimes, she shall commit the freehold of her own effects, the husband being unable to claim powers of administration and usufruct of the community, and her reserved property; she shall not commit any common property or her husband's property unless the latter has become involved in his wife's business or has given his agreement, by means of the statement recorded in the commercial and industrial register, that his separate property and the joint property are committed.

Article 15

The heading and the following provisions of section IV of chapter VII, title I of book III of the Commercial Code are amended as follows:

Section IV

THE RIGHTS OF THE OTHER SPOUSE

Art. 528. Where a spouse is declared bankrupt or allowed to benefit from winding up subject to supervision of the court, the personal property of the other spouse shall not be included in the estate, provided the latter establishes his or her rights in accordance with the provisions of the Civil Code.

An action for recovery of property shall be brought only if the debts and mortgages with which the property is legally encumbered are respected.

Art. 529. Property acquired for valuable consideration by the spouse of the debtor shall not be included in the estate, unless the spouse in question proves by any means that the acquisitions were made with the assistance of funds provided by the debtor.

Art. 530. A spouse whose husband or wife was in business at the time the marriage was celebrated or whose husband or wife subsequently went into business, may not, in case of bankruptcy or winding up under the supervision of the court, bring an action in respect of advantages and gifts given by one spouse to the other; the creditors, for their part, may not avail themselves of such advantages and gifts.

MOROCCO

THE MOROCCAN CONSTITUTION*

The draft constitution having been approved by referendum on 24 July 1970, the new Moroccan Constitution was promulgated by the *Dahir* of 31 July 1970, which was published in the *Bulletin Officiel* of 1 August 1970. The new text consequently abrogated that of the previous Constitution promulgated on 14 December 1962.

The Moroccan Constitution consists of a preamble and 12 parts, the last of which, embodying transitional provisions covering the period up to the installation of Parliament, is no longer relevant.

Preamble

The preamble states that Morocco, a sovereign Islamic State whose official language is Arabic, forms part of the Greater Maghreb. As an African State, it includes among its objectives the attainment of African unity.

It also adheres to the principles, rights and obligations deriving from the charters of the international organizations, of which it is an active and dynamic member, and undertakes to contribute to the maintenance of world peace and security.

It may be noted in this connexion that as soon as Morocco attained independence one of the first actions of His late Majesty Mohammed V was to refer specifically, in the speech from the throne of 18 November 1955, to the Universal Declaration of Human Rights and to proclaim his adherence to the fundamental rules embodied in it.

Part I (arts. 1-18): General provisions

In the first section (arts. 1-7) of this part it is stated that Morocco is a constitutional, democratic and social monarchy (art. 1). It therefore follows that sovereignty is vested in the nation, which exercises it either by way of referendum or through constitutional institutions (art. 2).

There is no single-party system; political parties, trade unions and professional organizations, together with communal councils, contribute to the organization and representation of the citizens (art. 3). The law, which is the exclusive prerogative of Parliament and emanates from the will of the nation, is binding on all and does not have retroactive effect (art. 4).

It is also stipulated that all Moroccans are equal before the law and that Islam is the religion of the State, which guarantees all people freedom to practise other faiths (arts. 5 and 6).

The emblem of the Kingdom is a red flag with a green five-pointed star in its centre; its motto is "God, Country, King" (art. 7).

Part I also relates to the protection of the political rights of the citizen (arts. 8-12).

Originally, the fundamental law promulgated by King Hassan II by the *Dahir* of 2 June 1961 laid the foundations for the provisions which were to be embodied in the two subsequent constitutions.

Men and women are ensured equal political rights. Any citizen who is of full age and in possession of his civil and political rights is entitled to vote (art. 8).

The constitution also guarantees to all citizens:

Freedom of movement and residence throughout the Kingdom;

Freedom of opinion, freedom of expression in all its forms and freedom of assembly;

Freedom of association and freedom to join any trade union or political organization of their choice (the exercise of the above freedoms is subject to no limitation save by law (art. 9));

Freedom from liability to arrest, detention or punishment, save in the cases and in the manner prescribed by law (art. 10);

The inviolability of the domicile, searches being permitted only under the conditions and in the manner prescribed by law (art. 10);

Secrecy of correspondence (art. 11);

Access to the public service and public employment without discrimination of any kind (art. 12);

The economic and social rights of the citizen are guaranteed in articles 13-18;

All citizens have an equal right to education and to work (art. 13);

* Note transmitted by the Moroccan Government.

The right to strike remains guaranteed, the conditions in which this right may be exercised being prescribed by an organic law (art. 14);

The right to own property remains guaranteed, expropriation being permitted only in accordance with a specific law (art. 15).

As a counterpart of the above rights citizens have the following responsibilities:

All citizens are liable to military service in the defence of the country (art. 16);

Every citizen is liable to taxation, according to his capacity, to meet public expenditure which is allocated only in accordance with the law (art. 17);

All citizens bear collectively the expenditure required to meet disasters that befall the country (art. 18).

It should be noted that, in applying the above constitutional provisions, Moroccan legislators, acting in as liberal a spirit as possible, have not adhered to a restrictive interpretation. On the contrary, they have, in the spirit of the Constitution and the Declaration of Human Rights, broadened and developed all measures which could be considered within the purview of the protection of human rights.

Thus, the *Dahir* of 10 February 1959 establishing the Code of Criminal Procedure had already endeavoured, with the utmost care and with the continuous aim of protecting the freedom of the individual, to define and regulate the conditions in which a person might be held in custody before and after trial. All its provisions were manifestly based on the principle of the presumption of innocence. It greatly increased the number of precautions both at the stage of the preliminary investigations and at that of the judicial inquiry and trial of offenders. The freedom of the defence was scrupulously regulated, and restraints were placed on the detention of untried persons — a coercive measure whose exceptional nature was proclaimed in the Code.

Similarly, care was taken in the Code to determine procedures relating to the rules of evidence, the citation of untried prisoners, the optional or obligatory assistance of a defence counsel, the services of an interpreter where necessary, the public nature of court hearings, special provisions for the trial of young offenders, the exercise of the right of appeal (retaining in principle the rule of the two levels of jurisdiction), and the permanent right of untried prisoners to request their provisional release.

The Criminal Code published in the *Dahir* of 26 November 1962 also made a point of establishing penalties for all offences of any kind which might constitute an encroachment on the freedom of the individual.

The application and enforcement of penalties were based on the most modern criminological concepts: the legality of penalties and offences was established, similar action being taken with regard to the non-retroactivity of criminal laws, with the exception of laws which are more lenient than those which they replace.

It was established in principle that sentences may be served concurrently, and provisions concerning the adaptation of penalties to individual cases were established through the introduction of the concepts of legal excuses and extenuating circumstances.

The inviolability of the domicile, guaranteed by article 10 of the Constitution, subject to legal restrictions, was dealt with in articles 61, 62 and 64 of the Code of Criminal Procedure, which limit the grounds on which, and the times when, searches may legally be carried out. In addition, article 230 of the Code is designed to repress the crime of violation of the domicile.

The conditions under which property may be expropriated, established by the *Dahir* of 3 April 1951, require that the public benefit of such action be demonstrated, that judicial expropriation orders be issued, and that fair compensation be paid for property thus expropriated.

With regard to the protection of civic, social and religious rights, the charter of public freedoms established by three *Dahirs* of the same date (15 November 1958) regulates the freedoms of the press, assembly and association.

The freedoms enjoyed by trade unions are covered by a *Dahir* of 16 July 1957 and the freedom of access to public office by article 4 of the *Dahir* of 24 February 1958.

Lastly, the right to education is embodied in the *Dahir* of 13 November 1963, the secrecy of correspondence is established in article 232 of the Criminal Code, and restriction of the freedom of worship is repressed by articles 220-223 of the Criminal Code.

Part II: The Royalty

Articles 19-23 relate to the prerogatives of His Majesty the King. Article 19 states that Amir Al Mouminine, supreme representative of the nation, symbol of its unity and guarantor of its existence and continuity, will ensure respect for Islam and the Constitution, that he has the responsibility for safeguarding the rights and liberties of the citizens, communities and organizations, and that he will guarantee the independence of the nation and the territorial integrity of the Kingdom in accordance with its true frontiers.

Article 20 establishes the hereditary nature of the throne of Morocco and its constitutional rights, and at the same time lays down regulations concerning its transfer from father to son in a direct line to the male descendants of His Majesty King Hassan II in the order of their birth; this rule will be followed unless the King during his lifetime appoints from among his sons a successor other than his eldest son. If the King has no male descendant, the throne will be inherited by his nearest male next-of-kin in accordance with the same conditions.

Article 21 defines the powers of the Trusteeship Council before the King reaches the age of, firstly, 18 years and secondly, 21 years.

Articles 22 and 23 stipulate that the King is entitled to a civil list and that his person is sacred and inviolable.

Articles 24-35 enumerate the prerogatives reserved for the King. These prerogatives correspond to the powers traditionally vested in Chiefs of State: he presides at the Council of Ministers; he promulgates legislation, which may be submitted to a referendum; he has the right to dissolve the Chamber of Representatives, to address Parliament and to exercise administrative authority by means of *dahirs*, some of which must be countersigned by the Prime Minister; he determines the scope of the authority which may be delegated to the Prime Minister; he is Commander-in-Chief of the Royal Armed Forces; he has the exclusive right to appoint personnel to civil and military posts and may also authorize other persons to exercise that right; he has the right to appoint ambassadors and representatives to international organizations and to sign and ratify treaties, except those involving the State in financial expenditure, which are submitted to Parliament for prior approval; he is President of the Superior Council for National Development and Planning; he is President of the Superior Judicial Council and has the exclusive right to appoint judges; he is President of the Superior Educational Council; and he exercises the right of amnesty.

In addition, article 35 empowers the King to declare a state of emergency by *dahir* if the integrity of national territory is threatened or in the event of developments which may interfere with the functioning of the constitutional institutions. Before a state of emergency can be declared, the Chamber of Representatives must be consulted and a statement must be made to the nation. The King then has the power to adopt such measures as may be necessary for the defence of territorial integrity, the renewal of operation of the constitutional institutions, and the conduct of the affairs of State.

The state of emergency will be terminated in accordance with the same procedure as that followed for its proclamation.

The above provisions are quite explicit and do not require any special comment.

Part III: The Chamber of Representatives

This part contains three sections relating to the organization of the Chamber of Representatives, the powers of the Chamber, and the exercise of legislative power.

The organization of the Chamber of Representatives (arts. 26-43)

It should be noted at this point that Morocco has renounced the two-chamber system, adopted in accordance with the Constitution of 14 September 1962, in favour of a single-chamber system. This decision was taken because the experimental adoption of the two-chamber system did not lead to conclusive results and because it appeared that a second political chamber is likely to retard, if not paralyse, the legislative process, which is already complex in a single-chamber system.

It thus seemed more efficient and more consistent with the social structures of Morocco to entrust legislative power to a single chamber whose composition was judiciously distributed, for a period of six years, between members elected by direct universal suffrage, members elected by an electoral college composed of communal councillors, and finally, members elected by electoral colleges consisting of the elected representatives of professional organizations and of wage-earners (art. 43).

It should be noted in this connexion that the *Dahir* of 31 July 1970 promulgating an organic law relating to the composition and election of the Chamber of Representatives (*Bulletin officiel* of 1 August 1970), issued pursuant to the above-mentioned article 43, established the number of representatives at 240, of whom 90 are elected by direct universal suffrage (in a vote for a single member by a relative majority in one ballot), 90 are elected by a college composed of communal councillors, 60 are elected by colleges composed of the members of agricultural, artisanal, commercial and industrial organizations and the representatives of wage-earners.

Article 36 of the Constitution stipulates that the members of the Chamber of Representatives derive their mandate from the nation and may not delegate their right to vote. Article 37 reproduces the traditional provisions relating to parliamentary immunities. Article 38 provides that the Chamber of Representatives will hold two sessions a year and that if the meetings of the Chamber continue for more than two months the session may be terminated by decree. Article 39 stipulates that extraordinary sessions may be held at the request of an absolute two-thirds majority or by decree.

No comment is called for concerning articles 40-42, which relate to the access of the Ministers to the Chamber, the public nature of meetings (although the Chamber may hold closed meetings), the publication of complete minutes of debates in the *Bulletin officiel* and finally, the rules of procedure of the Assembly, which must be approved by the Constitutional Chamber of the Supreme Court.

The powers of the Chamber of Representatives (arts. 44-50)

Article 44 reserves for the Chamber the right to enact legislation. It nevertheless provides that the Chamber may authorize the Government, for a limited period and for specific objectives, to take by decree, after consultation with the Council of Ministers, measures which are within the normal sphere of statute law. Such action is nevertheless subject to the approval of the Chamber when the specified period has expired. The article concerns

the consistent constitutional practice relating to legislative decrees.

Article 45 then defines and delimits the sphere of statute law while article 46 states that all matters which are not within the sphere of statute law are considered to fall within the purview of the regulatory power. In addition to the matters expressly allocated to it by the Constitution (organic laws), the sphere of statute law comprises the following:

The individual and collective rights enumerated in part I;

The creation of new courts;

The basic guarantees given to the civil and military officials of the State.

It is also stipulated that the aforesaid provisions may be clarified or complemented by an organic law.

It is thus apparent that everything which is essential to social and public life is within the sphere of statute law and not within the purview of the regulatory power.

Article 47 relates to the question whether a text of a regulatory nature which was previously adopted on a legislative basis may be amended in a manner other than by means of legislation. This question is resolved affirmatively with the proviso that the endorsement of the Constitutional Chamber of the Supreme Court must first be obtained.

Articles 48-50, relating to martial law and the procedures for the enactment of the financial code do not contain any provision which calls for comment (see organic law concerning finance of 3 October 1970 — *Bulletin officiel* of 5 October 1970).

The exercise of legislative power (arts. 51-57)

Although, under article 44 of the Constitution, only the Chamber may exercise legislative power, the initiative for introducing legislation lies with either the Government, which submits draft legislation, or the members of the Chamber, who submit legislative proposals (art. 51).

The Government may, understandably, reject any legislative proposal or amendment which is outside the sphere of statute law. The Constitutional Chamber will be responsible for settling any dispute that may arise concerning the exact nature of such a text (art. 52).

Article 53 stipulates that any draft legislation or legislative proposal must be referred to the competent committees for consideration and article 54 authorizes the Government during recess periods to issue legislative decrees, which must be submitted to the Chamber for approval on the same basis as those referred to in article 44.

The only observation that need be made about articles 55-57 is that organic laws are subject to special rules, one of which is that they must be submitted to the Constitutional Chamber for approval before their promulgation.

Part IV: The Government (arts. 58-63)

The Government, which is responsible to the King and the Chamber of Representatives and is composed of the Prime Minister and the Ministers, all appointed by the King (art. 24), is responsible for the implementation of legislation and deals with administrative matters (arts. 58-60).

The Prime Minister has the following powers:

After the appointment of the Government, he in person presents to the Chamber of Representatives the programme which he intends to execute (art. 59).

He has the right to introduce draft legislation. He may not, however, introduce draft legislation before it has been discussed by the Council of Ministers (art. 61).

He exercises the regulatory power in so far as such power has been delegated to him by the King in accordance with article 29; any measures taken by him must be countersigned by the Ministers responsible for their execution (art. 62).

He must countersign all *dahirs* issued by the King, with the exception of those referred to in articles 21, second paragraph, 24, 35, 66, 69, 77, 84 and 94 (art. 29).

Lastly, he co-ordinates ministerial activities (art. 63).

Part V: The relations between the various authorities (arts. 64-74)

This part defines the relations which must be established, firstly, between the King and the Chamber of Representatives, and secondly, between the Chamber and the Government.

The relations between the King and the Chamber of Representatives (arts. 64-72)

The King, who, it will be remembered, is responsible for promulgating legislation (art. 26), has the right to ask the Chamber for a second reading of legislative proposals (but not of draft legislation, which is submitted by the Prime Minister). Such requests are made in the form of a message from the King to the Chamber, which has an obligation to hold a new debate (arts. 64 and 65).

Article 66 accords the King the right to hold a referendum on any draft legislation or legislative proposal, the results being binding on all.

If the people by way of referendum approve draft legislation introduced by the Prime Minister which has been rejected by the Chamber of Representatives, the Chamber will automatically be dissolved (art. 68).

The Chamber will be dissolved by *dahir* after the King has consulted the President of the Constitutional Chamber of the Supreme Court and has addressed the nation (art. 69).

Article 70 states that the new Chamber must be elected within three months from the time when

the *dahir* dissolving the Chamber is issued, the powers of Parliament being exercised by the King during that period in order to prevent any disruption of continuity.

Article 71 stipulates that the succeeding Chamber may not be dissolved during the year following its election.

Lastly, article 72 states that war may not be declared until the Chamber has been notified.

The relations between the Chamber of Representatives and the Government (arts. 73 and 74)

Articles 73 and 74 relate to the means by which the Chamber can influence the Government's discharge of its political responsibilities. The Government itself may take the initiative in this respect; under the terms of article 73, the Prime Minister may, after consultation with the Council of Ministers, ask for a vote of confidence in the Government regarding a general policy statement or the approval of draft legislation.

Confidence in the Government may not be withdrawn except by vote of the absolute majority of the members of the Chamber; a vote of no confidence will entail the collective resignation of the Government.

Article 74 provides that the Government's discharge of its political responsibilities may be challenged by the Chamber through a vote on a motion of censure. Such a motion will not be accepted unless it is signed by at least one quarter of the members of the Assembly.

Once that number of signatures has been obtained, the adoption of the motion of censure by an absolute majority will entail the collective resignation of the Government.

If a motion of censure has been rejected, the signatories may not introduce a similar motion for one year.

The two procedures by which the Chamber may challenge the Government's discharge of its political responsibilities are each subject to three clear days' notice from the time of submission of either the motion relating to confidence or the motion of censure.

Part VI: The Judicial system (arts. 75-80)

Article 75 reaffirms the principle of the separation of the powers and the independence of the judiciary *vis-à-vis* the legislative and the executive power (art. 237) and encroachment by the administrative authorities on the powers of the courts and tribunals (art. 239).

Article 76, relating to enforcement procedure, provides that judgements will be pronounced in the name of the King. Article 77 stipulates that the judges will be appointed by royal *dahir* on the recommendation of the Superior Judicial Council. A special feature of this right of appointment – an extension of that provided for in article 30 – is that it may not be delegated and that *dahirs* embodying the appointment of judges do not have to be countersigned by the Prime Minister (art. 29, second paragraph).

Article 78 stipulates that judges may not be dismissed from office – an effective guarantee of the independence of the judiciary. It should be noted that, in accordance with the traditional rule, the aforesaid provision does not extend to officers of the *Ministère Public* who are administratively responsible to the Minister of Justice, which is understandable since they are not called upon to hand down judgements.

Article 79 establishes the composition of the Superior Judicial Council, which is presided over by the King, and article 80 defines its over-all role.

The above provisions should be regarded as supplementing those of the *Dahir* of 30 December 1958 establishing the State of the Judiciary, which determines the various powers of the Superior Judicial Council.

Part VII: The High Court (arts. 81-85)

This part concerns the criminal responsibility of members of the Government, who are subject to the jurisdiction of the High Court for serious and less serious offences committed in the performance of their functions. In the case of the same offences committed in curcumstances unrelated to the performance of their functions, members of the Government are subject to the jurisdiction of the Supreme Court, which in a plenary meeting of all its chambers will hand down judgement in accordance with article 267 of the Code of Criminal Procedure.

Members of the Government may be charged only by the Chamber of Representatives, which will reach a decision by secret ballot and by a majority of two thirds of its members, with the exception of those members who are called upon to participate in the process of prosecution, investigation or judgement.

Pursuant to the organic law of 1 October 1970 (*Bulletin officiel* of 5 October 1970), the High Court is composed of a President, six regular judges and three alternate judges, all advisers being elected by the Chamber.

The Commission of Investigation is composed of three Supreme Court judges and four members elected by the Chamber. It comprises, as alternate members, one Supreme Court judge and two representatives elected by the Chamber.

The *Ministère Public* is represented by one official from the *parquet général* of the Supreme Court assisted by two members elected by the Chamber of Representatives.

Lastly, the President of the High Court, the judges of the Supreme Court and the Chief of the *Ministère Public* are appointed by *dahir*.

Methods of procedure are determined by the organic law, which stipulates that, when the preliminary investigation reveals evidence which indicates the existence of collaborators or accomplices of members of the Government, such persons will be tried separately before a court of ordinary law.

Part VIII: The local communities (arts. 86-88)

These articles define the nature of the local communities, provinces, prefectures and communes, which elect assemblies to conduct their affairs on a democratic basis.

Part IX: The Superior Council for National Development and Planning (arts. 89-92)

The Superior Council for National Development and Planning, which is presided over by the King, is empowered to consider the draft development plans which are to be submitted to the Chamber. The *Dahir* of 1 October 1970 embodying an organic law (*Bulletin officiel* of 5 October 1970) defines the composition of the Superior Council.

Part X: The Constitutional Chamber of the Supreme Court (arts. 93-96)

This body is presided over by the First President of the Supreme Court and also comprises:

A judge of the Administrative Chamber of the Supreme Court and a professor who is a member of a faculty of law, both of whom are appointed by *dahir* for a period of six years;

A member of the Chamber of Representatives appointed by the President of that Chamber at the commencement of the legislative term.

The rules concerning the organization and functioning of the Constitutional Chamber were established by the *Dahir* of 31 July 1970 embodying an organic law (*Bulletin officiel* of 1 August 1970).

The powers of the Chamber are those which have been entrusted to it under the Constitution:

To approve organic laws (art. 57 of the Constitution);

To approve regulations adopted by the Chamber (art. 42);

To express an opinion on the amendment by a regulatory text of a previous text already enacted on a legislative basis (art. 47);

To express an opinion on the inadmissibility of a legislative proposal or amendment rejected by the Government (art. 52);

To give rulings in matters relating to the election of representatives (art. 43).

(*Dahir* of 31 July 1970 embodying an organic law relating to the composition and election of the Chamber of Representatives — *Bulletin officiel* of 1 August 1970.)

Part XI: The amendment of the Constitution (arts. 97-100)

The initiative for amending the Constitution lies solely with the King. The Chamber of Representatives may, however, by a majority of two thirds of its members, propose such amendment to the King. An amendment may become final only after it has been adopted by way of referendum. The monarchic form of the State and the rules of the Moslem religion may not be amended.

These are, in brief, the essential provisions of the Moroccan Constitution of 31 July 1970. They fully conform to the structures and the constitutional, democratic and social nature of the Kingdom, as defined by article 1 of the Constitution.

NETHERLANDS

NOTE*

I. Legislation

1. CONSTITUTION

Two bills to amend the Netherlands Constitution were submitted in 1970; they were concerned with fundamental rights.

Among the most important innovations proposed by the Netherlands Government were the insertion in the Constitution, in the category of fundamental rights, of provisions concerning electoral rights, freedom of expression, the right to demonstrate and the secrecy of telephonic conversations; the extension of the concept of freedom of religion to the freedom of belief; and the removal of the ban on the organization of processions, which in any case was not applied throughout the whole of the Netherlands.

To emphasize the importance of fundamental rights, it is proposed to bring together, in chapter I of the Constitution, all the fundamental rights scattered throughout the Constitution.

Since a proposal to amend the Netherlands Constitution must go through two readings in Parliament and since consideration of these bills has been deferred until after the 1971 elections it will still require a great deal of time to effect this revision of the Constitution.

2. ELECTORAL LAW

In the past every elector was bound to present himself at the polling station at the time of election (he was not bound to vote). This obligation has now been removed from the Electoral Law.

3. THE NEW CIVIL CODE

The first book of the new Civil Code became effective on 1 January 1970.

The most important amendments of existing law are set out below.

Title 2: Names

Article 9 recognizes the right of a married woman to bear her husband's surname or to put it before her own name. Officially, however, she will bear, as in the past, her maiden name. After a divorce, the husband may, if there are valid reasons, request the court to forbid his ex-spouse to continue to bear his name. This injunction may not be made if there are living children born of the marriage, since the mother and child would thereby not bear the same name.

Title 5: Marriage

The provision according to which adult persons (aged 21 and over) must have the consent of their parents to marry until they reach the age of 30, has been repealed. Consent is still required for minors.

The provision forbidding an adulterous party from marrying the person with whom adultery was committed has also been repealed.

Regarding the conditions imposed on a woman who wishes to remarry, the new Civil Code makes a distinction between widows (1) and divorcees (2).

Ad (1) If the marriage was dissolved by the death of the husband, the wife may not contract another marriage until 306 days have elapsed since the dissolution of the marriage unless:

She is aged 52 or over;

She has given birth to a child after the death of her husband;

She produces a medical certificate showing that at the time of death or after the death of her husband she was not pregnant;

She was physically separated or was living separately from her husband for the last 306 days of the marriage.

Ad (2) If the marriage was dissolved by divorce, the wife is not bound to observe any waiting period.

The number of cases in which marriage is prohibited by reason of kinship has been limited. Marriage is prohibited between persons related by

* Note communicated by the Netherlands Government.

consanguinity or marriage in the ascending and descending lines and between brother and sister.

Title 11: Paternity and filiation

The new provisions improve the position of natural children.

The law henceforth recognizes only legitimate and natural children.

A legitimate child is a child born either during a marriage or before the 307th day following the dissolution of a marriage; if the mother remarries meanwhile, however, the child is a legitimate child of the new marriage.

After a divorce and also in certain cases after the death of the husband, a mother may deny that an infant born before the 306th day following the dissolution of the marriage is her husband's child. Such denial is only effective if, at the time it is made, another man recognizes the child and if, in addition, the mother marries that man within one year following the birth. In this case the child becomes a legitimate child of the second marriage.

Natural children are no longer placed in different categories as they were in the old Civil Code; the unfavourble category of incestuous and adulterous children disappears.

At birth, the filiation of a natural child is established with respect to the mother and, in addition, with respect to the father when the latter recognizes it (this aspect is important for the right of succession).

Recognition has been made possible in a larger number of cases: adulterous children may also be recognized.

Recognition of incestuous children remains impossible.

Title 17: Maintenance

The maintenance obligation existing between grandparents and grandchildren has been eliminated. The legislator has introduced an obligation of the stepfather/stepmother (second marriage) to minor stepsons/stepdaughters. Maintenace is only due to persons related by consanguinity or marriage if they are in need; however, the maintenance obligation of parents and of stepfather/stepmother to minors is more extensive and includes the costs of maintenance and education.

4. PROTECTION OF PRIVATE LIFE

The bill carrying a number of penal provisions relating to the protection of private life, described in previous contributions to the *Yearbook on Human Rights,* has been accepted by both Chambers of the States-General.

II. Judicial decisions

Mention should be made of some of the decisions of the Supreme Court of 1969 which were published only in 1970 in *Nederlandse Jurisprudentie.*

A. THE RIGHT TO EDUCATION

(i) This decision (Supreme Court, 17 June 1969, *Nederlandse Jurisprudentie 1970,* 27) considered whether a restriction imposed by the legislator on persons wishing to give driving lessons – that they must have been in possession of a valid driving licence for at least 3 years – was contrary to the freedom of instruction guaranteed by the Constitution.

The Supreme Court judged in this matter that the freedom of instruction guaranteed by the Constitution allows the legislator for traffic matters to impose, in the interests of road traffic, rules regarding traffic on roads or byways even if those rules have the effect – and in this instance it was in fact the case – of limiting the opportunity to give driving lessons on roads or byways open to the public traffic.

(ii) This decision (Supreme Court, 31 October 1969, *Nederlandse Jurisprudentie 1970,* 57) concerned the case of a woman who had attended a training course to teach a special form of physical culture. She had signed a declaration whereby she undertook, in particular, should the training be discontinued, not to give any courses in that form of physical culture nor to take up any auxiliary post in that branch of instruction. At a certain point in time, she broke off her training and started to teach that special form of physical culture.

The federation which provided the training sued the woman on the strength of the clause in question. The Court of Appeal ruled that the clause, which in practice barred the woman for her whole life from teaching that particular form of physical culture, infringed the right she possessed to freedom to provide instruction – a right enshrined in the Constitution to such an extent that the clause must be considered as contrary to public order and morality (according to the Netherlands Civil Code, contracts may not be contrary to public order and morality).

The Supreme Court considered, however, that in order to judge whether a clause such as that in question was contrary to public order and morality, it was necessary to consider the interests that the contract was to serve and to ask whether those interests were so important as to justify a restriction at that point of the liberty to provide instruction. The sentence of the Court of Appeal was quashed and the case was transmitted to another Court of Appeal to be re-examined there and decided in the light of the decision of the Supreme Court.

B. THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

This decision (Supreme Court, 4 November 1969, *Nederlandse Jurisprudentie 1970,* 127)

concerns a person who, in connexion with the approach of Ramadan (the Moslem fast), had killed a goat according to the Moslem rite, following thus the requirements of his religion, without having previously informed the municipal animal, butchery and meat inspection service. A legal action was brought against him.

The man invoked article 9 of the European Convention for the protection of human rights and fundamental freedoms. This provision is binding in Netherlands law and covers the right of everyone to freedom of thought, conscience and religion including equally, in addition to the freedom to change one's religion or belief, "freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance". The Supreme Court considered that the acceptation of this provision was not so wide as to dispense anyone who wished to kill a goat ritually or have it killed ritually from the obligation to inform a legally designated instance of the intention to perform such an act.

NETHERLANDS ANTILLES

LEGISLATION

1. A radical change in the Civil Code of the Netherlands Antilles came into effect on 1 November 1970, improving considerably the legal status of children. An important point is that a bond of consanguinity exists *ipso facto* between a natural child and his mother from birth. Previously, in the Netherlands Antilles, special recognition by the mother was necessary to establish the filiation of a natural child.

2. A National Ordinance of 2 February 1963 applying the Convention on the Prevention and Punishment of the Crime of Genocide, done in Paris on 9 December 1948, came into effect on 1 September 1970.

NEW ZEALAND

NOTE*

I. Legislation

1. *Age of Majority Act*

The Act lowers the age of majority from 21 to 20. Persons already aged 20 on the date when the Act came into force (1 January 1971) were deemed to become adults on that date.

2. *Coal Mines Amendment Act*

The Act makes some minor improvements in requirements for the ventilation of coal mines.

3. *Education Amendment Act*

Regulations may now be made for the award of special scholarships to Maori children of any degree of descent and to other students belonging to the Polynesian race who are, or who are descendants of, natives of any island in the South Pacific Ocean, and who are New Zealand citizens or have lived in New Zealand for not less than five years and are permanently resident in New Zealand. Before, scholarships of this type could be awarded only to Maoris of half blood or more.

The Act also provides that private commercial colleges may apply for registration as such if the Director-General of Education is satisfied, upon an inspection, that the college is efficient in respect of the course of instruction it affords.

4. *Industrial Conciliation and Arbitration Amendment Act*

The Act provides for a compulsory clause on the settlement of disputes to be inserted in all new awards and industrial agreements. The clause is deemed to have been inserted in existing awards and agreements. The Act also lays down a procedure for the settlement of personal grievances and establishes an "Industrial Mediation Service" to combat the problem of industrial disputes.

5. *Industrial Research and Development Grants Act*

The Act aims at promoting increased industrial research and development by New Zealand industry for the benefit of New Zealand.

6. *Pharmacy Act*

The Act consolidates and improves the law relating to the registration and control of pharmacists and to the practice of pharmacy.

7. *Plants Act*

The Act confers on inspectors appointed for the purposes of the Act wide powers to detain, open, inspect, destroy or otherwise deal with plant material, beneficial organism, disease, pest, soil, package, packing material, article of luggage or other thing. The purpose of the Act is the prevention and control of plant diseases. As long as an inspector produces evidence of his appointment if required to do so, he may enter upon any land (other than a dwelling house) in the exercise of his functions. He may not, however, enter a dwelling house unless authorized to do so by a warrant under the hand of a Magistrate.

8. *Public Works Amendment Act*

The Act makes some miscellaneous improvements in the provisions of the principal Act concerning compensation payable when land is compulsorily acquired.

9. *Narcotics Amendment Act*

The Act gives a court or coroner power to prohibit publication of the name of a narcotic to which reference has been made during the proceedings. The prohibition does not apply to publication to scientists, members of the medical and related professions, or persons studying to become scientists, or members of those professions, or to publication in journals of a scientific or technical character.

* Note furnished by the Government of New Zealand.

II. Judicial decisions

1. *Mitchell* v. *N.Z. Broadcasting Corporation* [1970] N.Z.L.R. 314

The plaintiff, an independent candidate at the 1969 General Election, sought a declaratory order that he should be enabled to broadcast an election address through the service carried on by the Corporation. It was held that, in the absence of evidence from the plaintiff, the affidavit of the executive director of the Corporation was accepted as evidence that the Corporation had satisfied itself of the matters referred to in s.10 (2) *(b)* of the Broadcasting Corporation Act 1961. (This subsection requires the Corporation to satisfy itself, so far as possible, that programmes broadcast by it maintain a proper balance in their subject matter and a high general standard of quality.) The court will not interfere unless it is shown that the Corporation acted in bad faith, took irrelevant matters into account, failed to take account of relevant matters or took a view so unreasonable that no reasonable Corporation could ever have reached it. The plaintiff accordingly had no right to broadcast an election address without payment.

2. *News Media Ownership* v. *Finlay* [1970] N.Z.L.R. 1089

In a speech in Parliament, the respondent referred to a campaign being carried on by the appellant against the penal policy of the Department of Justice. As a result of the rejoinder published by the appellant, the respondent was awarded damages for libel. On appeal by the appellant it was held that the trial judge was correct in ruling that the appellant had gone beyond its right to reply to the attack made on its motives. Even though an occasion is privileged, privilege is lost if the reply becomes a counter attack raising allegations which are unrelated or insufficiently related to the original attack.

3. *Pollock* v. *Pollock & Grey* [1970] N.Z.L.R. 771

The petitioner in divorce proceedings served a subpoena upon two officers of the Child Welfare Department requiring production of a departmental file dealing with an application by Mr. and Mrs. P. to adopt a baby and the giving of oral evidence both as to alleged conversations and as to results of observations made by the officers during the adoption enquiries. The Minister of Health claimed Crown privilege in respect of both matters. It was held that, assuming that the Crown could claim privilege in respect of the oral evidence in question and looking at the general nature of the "class" privilege claimed, the evidence sought to be withheld was of such a nature that a Judge should be able to assess its effect on the public interest just as well as could the Minister. In the light of information supplied by counsel of the sort of evidence each would seek from the witnesses, and taking into account that a lack of candour might occasionally creep into conversations between departmental officers and persons concerned in adoption if there was not the protection of Crown privilege, the Minister's claim to privilege in this case was not upheld.

4. *The Queen* v. *Strawbridge* [1970] N.Z.L.R. 909

On an indictment under s.5 (1) *(c)* of the Narcotics Act 1965 that the appellant cultivated prohibited plants, namely *cannabis sativa* plants, it is not necessary in order to present a *prima facie* case for the Crown to establish knowledge on the part of the accused that the plants she is cultivating are prohibited plants. In the absence of evidence to the contrary, knowledge on her part will be presumed, but if there is some evidence that the accused honestly believed on reasonable grounds that her act was innocent, then she is entitled to be acquitted unless the jury is satisfied beyond reasonable doubt that this was not so. The Court of Appeal accordingly directed a new trial.

5. *Dash* v. *Police* [1970] N.Z.L.R. 273

The appellant had been convicted of wilfully obstructing a constable in the execution of his duty. He had advised a friend, whom the Police had asked to take a breathalyser test, that there was no obligation to take the test. It was held that, unless the obstruction was done deliberately and with the intention of obstructing the constable, it was not "wilfully" obstructing him. On the evidence, the appellant's advice was given disinterestedly in response to a request from a friend of some five years' standing. The appellant's explanation of his behaviour was reasonable and excluded an intention to obstruct the Police. The conviction was accordingly quashed.

6. *Thompson* v. *Transport Department* [1970] N.Z.L.R. 474

The appellant had pleaded guilty by letter to a driving offence and had been disqualified from driving for three months. Before the notice of disqualification reached him he was charged with driving while disqualified, and disqualification for a further twelve months was imposed. On appeal against sentence, the court held that, although the particular offence did not require proof of *mens rea*, the appellant's lack of knowledge of his disqualification should have been taken into account by the lower court when considering sentence. The appeal was allowed.

7. *The Queen* v. *Bottle and McDonald* [1970] N.Z.L.R. 1118

The appellants came before a Judge for sentence on a charge of theft of copper wire and were

ordered to come up for sentence if called upon. They were later charged with an earlier offence of the same nature and sentenced by another Judge to six months' imprisonment. When the first Judge became aware of this he called upon the appellants to appear before him for sentence and sentenced each of them to three years' imprisonment. On appeal it was held that before acting as he did the Judge should have had evidence before him that the appellant's subsequent conduct had been unsatisfactory. As there was no such evidence, the sentences were quashed.

NIGER

ACT No. 70-8 OF 17 MARCH 1970 REGULATING PRIVATE EDUCATION*

TITLE I

Definitions and General Provisions

Article 1

No private educational or child welfare establishment may be opened without administrative authorization or a prior declaration depending on the circumstances.

Any establishment requiring authorization which was not authorized before this Act was promulgated, must be authorized as prescribed in the regulations within six months after the Act enters into force. Any existing establishment providing non-formal education must also make a declaration within the same time-limit.

Article 2

For the purposes of this Act, any institution which is designed to provide educational services regularly to a group of at least three children or persons from two different families shall be deemed to be an educational establishment.

Article 3

Private educational establishments must be designated in such a way as to avoid being confused with official educational establishments. The terms "primary School", "college" and all names that might lead to confusion should be preceded by the word "private". Only official educational establishments shall be designated as "lycées".

Article 4

There shall be three categories of private education:

(a) Instruction in schools for children at least six years old, either in the official curricula or in other educational subjects authorized in the regulations;

(b) Pre-school instruction, given regularly to children from three to six years old in premises specially designed for the purpose, in a variety of subjects constituting a general education (nursery schools, day schools for children, kindergartens);

(c) Non-formal education, which includes any form of instruction which is outside the normal context of education strictly speaking either because of the subjects taught, or the calibre of the pupils, the schedules or premises used or the qualifications of the persons providing the instruction.

Article 5

The following shall be deemed to constitute non-formal education: Koranic schools, catechism schools, adult education courses, day nurseries which merely provide supervision for children.

TITLE II

Private Schools

Article 6

Authorization to open or close a private establishment coming under category *(a)* of article 4, and authorization to operate or teach in such an establishment shall be granted under conditions to be established by decree.

Article 7

The requirements for operating private educational establishments shall be established by decree.

Article 8

It shall be compulsory for private educational establishments to use the official language as the language of instruction and to arrange for their pupils to sit for the official school examinations normally required for studies of the same kind.

Exceptions to these two obligations may be made through the competent authorities for

* *Journal officiel de la République du Niger*, No. 7, 1 April 1970.

private educational establishments which are of such a nature as to justify exceptional treatment.

Article 9

Private educational establishments shall be subject to continuing supervision by the administrative authorities of the State in the same general conditions as official establishments.

TITLE III

Private pre-school education

Article 13

Private pre-school educational establishments, as defined in article 4, paragraph *(b)*, shall be subject to the provisions of articles 6 to 12, except for the obligation to arrange for pupils to sit for examinations.

TITLE IV

Non-formal education

Article 14

Establishments providing non-formal education, as defined in article 4, paragraph *(c)* and in article 5, do not require prior authorization in order to open.

They shall make a declaration to that effect to the prefect of the department the terms of which shall be specified in a decree.

Article 15

Establishments providing non-formal education shall be subject to supervision by the administrative authorities in all things and particularly in respect of matters of morality and hygiene.

TITLE V

Financial aid from the State to private educational establishments

Article 16

Subsidies may be granted to private educational establishments as defined in article 4 *(a)* in accordance with procedures to be laid down in a decree.

TITLE VI

Other provisions

Article 17

Students holding national scholarships may be admitted to private educational establishments.

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NIGERIA

NOTE*

Introduction

The period under review contains very few pronouncements in the field of human rights. However the following is a summary of the few pronouncements.

I. Legislation

1. *The Nurses Decree 1970 (No. 2 of 1970)*

Section 13 of this Decree established a Nurses Disciplinary Tribunal whose duties include considering and determining any case recommended to it by a supervisory authority, as well as any other case of which the tribunal has cognisance under the provisions of the Decree. Section 14 of the Decree prescribes penalties for unprofessional conduct. The section provides, *inter alia*, as follows:

"14. (1) Where:

"*(a)* Any nurse registered under this Decree is convicted by any court in Nigeria or elsewhere having power to award punishment, of an offence (whether or not an offence punishable with imprisonment) which in the opinion of the tribunal is incompatible with the status of a nurse; or

"*(b)* The tribunal is satisfied that the name of any person has been fraudulently registered, the tribunal in either event may, if it thinks fit, caution or censure the nurse, or direct the removal of her name from the general register.

"(2) The tribunal may, if it thinks fit, defer or further defer its decision as to giving of a direction under the forgoing subsection until a subsequent meeting of the tribunal; but:

"*(a)* No decision shall be deferred under this section for a period exceeding 12 months in the aggregate; and

"*(b)* A person shall not be a member of the tribunal for the purpose of reaching a decision which has been deferred or further deferred unless she was present as a member of the tribunal when the decision was deferred or further deferred, as the case may be . . ."

Section 16 (1) *(b)* of the Decree makes provision for appeals against the decisions of the tribunal. The relevant subsection provides thus:

"16. (1) Any person aggrieved:

". . .

"*(b)* By a decision of the Council to remove her name from the general register, or . . . may within 28 days from the date of service of notification of the refusal, direction or withdrawal, as the case may be, appeal therefrom to the appropriate High Court of the State in which the person affected is normally resident or in which the hospital is situated, as the case may be."

2. *The Public Order (Bar to Certain Proceedings) Decree 1970 (No. 41 of 1970)*

This Decree protects certain government functionaries from civil or criminal proceedings in respect of certain deeds or publications made during the period of the Civil War. Section 1 (1) of the Decree provides thus:

"1. (1) No proceeding, whether civil or criminal shall lie or be instituted in any court for or on account of the broadcasting, production, reproduction or publication of any statement issued or made or purported to be issued or made by any government functionary between 27 May 1967 and 15 January 1970 if the statement gives or is intended to give information to the public in connexion with matters of defence, public safety, security, morality or health."

Section 1 (5) of the Decree suspends the provision of Chapter III of the Constitution of the Federation 1963 for the purpose of the Decree. Chapter III of the Constitution deals with Fundamental Human Rights. The subsection provides as follows:

"1. (5) Chapter III of the Constitution of the Federation 1963 is hereby suspended for the purpose of this Decree, and the question whether any provisions thereof has been or is being or would be contravened by anything done or

* Note furnished by the Government of Nigeria.

purported to be done in pursuance of this Decree shall not be enquired into in any court of law."

3. *The Public Officers (Special Provisions) Decree 1970 (No. 46 of 1970)*

Makes provision for the dismissal, removal or compulsory retirement of certain public officers whose activities during the civil war were not in the interest of any of the Governments in the Federation. Section 2 (1) of the Decree provides thus:

"2. (1) Where a public officer is dismissed, removed or retired compulsorily pursuant to section 1 above, he shall forfeit such benefits to which this Decree applies as may have been granted or, as the case may be, to which he becomes eligible unless the appropriate authority directs that the officer shall be granted or be eligible for such or so much of the benefits as the appropriate authority may in its discretion authorize."

Section 4 of the Decree excludes the provision of section 152 of the Constitution of the Federation 1963 which grants protection in respect of acquired pension rights; section 5 allows appeals from aggrieved persons to the Head of the Federal Military Government and section 6 excludes the jurisdiction of the Courts in matters covered by the Decree. This section provides thus:

"6. (1) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done by any person under this Decree and if any such proceeding has been or is instituted before or after the commencement of this Decree, the proceedings shall abate, be discharged and made void.

"(2) Chapter III of the Constitution of the Federation is hereby suspended for the purpose of this Decree and the question whether any provision thereof has been or is being or would be contravened by anything done or purported to be done in pursuance of this Decree shall not be inquired into in any court of law."

4. *Robbery and Firearms (Special Provisions) Decree 1970 (No. 47 of 1970)*

This Decree prescribes special punishment for armed robbery and sets up special tribunals to effect speedy trials for armed robbery. Section 5 of the Decree lays down the composition of the tribunals. The section provides as follows:

"5. (1) The Military Governor of each state shall constitute a tribunal or tribunals for the trial of offences under this Decree committed within his state.

"(2) A tribunal constituted under section (1) above shall consist of:

"*(a)* An officer of the Judicial Department of the State concerned not below the rank of a Chief Magistrate, who shall be Chairman;

"*(b)* An officer of the Nigerian Army not below the rank of a Captain or an officer in the Nigerian Navy or Air Force not below the corresponding rank; and

"*(c)* An officer of the Nigeria Police Force not below the rank of Superintendent of Police;

designated by the Military Governor.

"Provided that no officer of the Nigerian Armed Forces or of the Nigeria Police Force who has taken part in the search for, pursuit or apprehension of any person to be tried under this Decree or who has taken part in the investigation of the offence alleged to have been committed by that person shall sit as a member of a tribunal constituted for the trial of that person for that offence."

Section 8 of the Decree also contains some relevant provision. The section provides thus:

"8. (1) It is hereby declared for the avoidance of doubt that a tribunal constituted under this Decree shall, notwithstanding anything to the contrary in any enactment or law (including the Constitution of the Federation or the Constitution of a State), have the power, in appropriate cases, to award the punishments (including a sentence of death) specified in this Decree.

"(2) No right of appeal to any court in Nigeria granted by any enactment or law as aforesaid shall apply in respect of the conviction of an offender or in respect of any sentence imposed by a tribunal constituted under this Decree.

"(3) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purporting to be done under this Decree by the Military Governor of a State, or by any member or officer of a tribunal constituted under this Decree, and if such proceedings are instituted after the commencement of this Decree the proceedings shall abate, be discharged and made void.

"(4) The question whether any provision of Chapter III of the Constitution of the Federation has been, is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall not be enquired into in any court of law, and accordingly section 32, 115 and 117 (2) *(d)* of that Constitution shall not apply in relation to any such question.

"(5) It is hereby declared that section 24 of the Interpretation Act 1964 (which provides, *inter alia*, that a person shall not be punished twice where he is guilty of an offence under more than one enactment) shall apply in respect of this Decree."

II. Court Decisions

(1) *E.O.L. and Another* v. *The Attorney-General of Western State and two others (S.C. 58/69) Supreme Court of Nigeria*

This case was an appeal from the Court of Appeal of the Western State against a decision of

that Court in which an order confiscated certain properties of the appelants found by a tribunal of enquiry of the Western State to be corruptly acquired. The appellants first applied to the High Court of the State for an order to set aside the findings of the tribunal on the ground that there was a flaw in the law under which the tribunal was established. The High Court dismissed the application. They then appealed to the Court of Appeal and before that Court could give its verdict a Decree, No. 45 of 1968 (The Forfeiture of Assets, etc. (Validation) Decree 1968) was promulgated validating the order of the tribunal and excluding the jurisdiction of any Court in respect of the case. The appellants appealed to the Supreme Court and challenged the validity of Decree No. 45. The Supreme Court declared Decree No. 45 *ultra vires*, null and void on the ground that its provisions constituted a judicial usurpation and that the Decree was nothing but a legislative judgement which is contrary to the provisions of the Constitution of the Federation which give clear division of power between the legislature, the executive and the judiciary.

Note: In order to clear some uncertainties in the constitutional set up of the country as a result of the judgement, Decree No. 28 of 1970 entitled "The Federal Military Government (Supremacy and Enforcement of Powers) Decree 1970" was promulgated to clearly correct certain pronouncements of the Supreme Court contained in the judgement.

(2) *N.E.S.C.O. Ltd.* v. *Paul Gyang* (Appeal No. JD/4A/193 decided at the Jos High Court on 12 June 1970).

The issue to be decided in this case was whether or not the provision of section 8 (2) of the Wayleave Licence Law (Chapter 138, Laws of Northern Nigeria 1963) is null and void in view of the provisions of section 31 (1) of the Constitution of the Federation of Nigeria. The purpose of the Wayleave Licence Law is to give a licensee a right to carry electricity over land and to erect poles for the same purpose. Section 8 of the Wayleave Licence Law allows payment of compensation for any damage done by a licensee. Section 8 (2) provides thus:

"(2) Where a dispute arises as to the amount of compensation payable such amount shall be determined by a court exercising jurisdiction in the area and such decision shall be final."

Paul Gyang, who was the plaintiff at the lower court obtained compensation for certain damage done by the defendant who was a licensee. But he appealed to the High Court challenging the provision of section 8 (2) of the Wayleave Licence Law which makes the judgement of the lower court final in the case on the ground that that provision was contrary to section 31 (1) of the Constitution of the Federation which provides as follows:

"31 (1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that:

"*(a)* Requires the payment of adequate compensation thereof; and

"*(b)* Gives to any person claiming such compensation a right of access, for the determination of this interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria."

The High Court held that section 8 (2) of the Wayleave Licence Law was invalid in so far as it purports to make a decision of the trial court final because that provision is inconsistent with section 31 (1) *(b)* of the Constitution.

NORWAY

NOTE*

A. Statutes

1. *Act of 16 January 1970 (No. 1) concerning the National Population Register*

This Act supersedes an earlier Act of 1946. According to the Act, each municipality must keep a register of the residents in the municipality. The Central Office of the national register is attached to the Central Bureau of Statistics. With a view to checking, revising and supplementing the information contained in the national registers, the King is empowered to carry out investigations on a national or a local scale. (A nationwide investigation was carried out in the autumn of 1970.) In connexion with these surveys any person who is residing or temporarily staying in the district covered by the municipal register is obliged to give a number of particulars relating to himself and his or her household.

2. *Act of 27 February 1970 (No. 2), Amending the Act of 19 June 1947 (No. 5), concerning Immunity and Privileges for International Organizations etc.*

The Amendment aims at extending immunity and privileges through international agreements to persons taking part in legal proceedings before international bodies.

3. *Act of 6 May 1970 (No. 6) concerning Protective Measures against Damage caused by Oil Pollution*

The aim of the Act is to prevent, combat and limit oil pollution damage at sea, in inland waterways and on land. The Act contains, *inter alia*, provisions concerning the establishment of emergency arrangements to combat oil pollution.

4. *Act of 6 May 1970 (No. 26), Amending the Act of 15 December 1967 (No. 1), Extending the Period of Limitation for War Crimes and Crimes against Humanity*

This Act stipulates that, in the case of war crimes and crimes against humanity committed during the War 1939-1945 – to the extent that such crime comes under Norwegian penal law and may carry a sentence of life imprisonment – the Period of Limitation for prosecution and sentence by the Courts shall in no case expire before 31 December 1975.

5. *Act of 6 May 1970 (No. 27), Amending the Act of 31 May 1900, concerning Vagrancy, Mendicancy and Drunkenness etc.*

One of the main points of the Amendment was that hard labour was abolished as punishment for alcoholics. A provision making it a punishable offence to appear manifestly under the influence of alcohol in a public place was abolished. However, the police are still empowered to place intoxicated persons in custody until they are sober. The Amendment introduces a new departure in that an intoxicated individual can be committed to the sick-bay of a hospital or clinic, instead of being taken into custody. If it is apparent that the individual in question indulges in alcohol to the obvious detriment of himself or his environment he can, should the Court so decide, be detained in the sick-bay for up to one week for the purpose of medical observation.

6. *Act of 22 May 1970 (No. 30), Amending the Act of 20 May 1927 (No. 1), concerning Property Rights of Married Couples etc.*

The Amendment extends the mutual obligation of married couples to give information regarding their financial affairs. Further regulations have been introduced which aim at equality between husband and wife in terms of their right to enter into legally binding private dispositions relating to daily housekeeping expenses etc., and also in terms of their mutual liability for debts after separation or the termination of the marriage. If a spouse has contributed to the increment of the separate estate belonging to the other spouse, he or his heirs can be awarded a share of this increment.

Certain modifications have been made to the provisions which accord each of the spouses the right to receive, on the basis of official appraisement, real property as well as chattels, which he has brought into the joint estate.

7. *Act of 5 June 1970 (No. 34), Amending the Penal Code of 22 May 1902, with regard to Measures against Racial Discrimination etc.*

The Amendment extended the Penal Code's safeguards against racial discrimination in order to

* Note furnished by the Government of Norway.

clear the way for Norwegian ratification of the United Nations Convention of 21 December 1965, concerning the abolition of all forms of racial discrimination. (Norway ratified the Convention on 6 August 1970.) With the Amendment the provisions of the Penal Code relating to statements of a discriminatory nature etc., were made more comprehensive. Futhermore, a new penal clause was added, concerning discriminatory practices in enterprises, for example in hotels, restaurants or in shops. The provision also penalizes discriminatory acts in cases where an individual is denied the right to atted public performances etc. on the same terms applicable to others. The penal provisions are directed not only against racial discrimination, but against discrimination based on any person's religion, colour of skin or national or ethnic origin.

8. *Act of 5 June 1970 (No. 35) concerning Extradition in order to Implement Decisions regarding the Restriction of Personal Liberty by Authorities in another Nordic Country*

The Act contains provisions relating to the extradition *from* Norway, to another Nordic country, of children, youths, mentally disturbed individuals, alcoholics and drug addicts, negligent family supporters or vagrants, who have been admitted to various institutions for treatment in accordance with decisions taken by a public authority in the country demanding extradition. Corresponding laws have been introduced in the other Nordic countries regarding extradition from these countries *to* Norway when a Norwegian authority has taken a similar decision. Previously, corresponding provisions have been given for the extradition of criminals. The question of the extradition of children who have left home against their parents' will is at the committee stage.

9. *Act of 19 June 1970 (No. 63) concerning Conservation Measures with Regard to the Environment*

The Act supersedes the present legislation on nature conservation, but it is more comprehensive. Amongst other provisions, it contains provisions relating to the preservation and protection of valuable regions and natural resources as well as particular species of animal and plant life; the protection of natural environment and landscapes, a requirement that anyone intending to engage in activity which would interfere with the countryside must submit the matter to the nature conservation authorities beforehand; restrictions and preventive measures to avoid the accumulation of waste products, abandoned automobile wrecks etc. in the countryside.

10. *Act of 19 June 1970 (No. 68) concerning Powers to Prohibit the Use of Certain Types of Disposable Packaging in the Marketing of Consumer Goods*

The Act empowers the King, or anyone the King authorizes, to lay down provisions prohibiting the use of certain types of disposable packaging in the marketing of consumer goods. The aim is *inter alia* to counteract the pollution of the countryside through the accumulation of waste.

11. *Act of 26 June 1970 (No. 75) concerning Protective Measures to Prevent Pollution*

The Act replaces present legislation relating to water pollution. Apart from inland waterways, it also comprises areas of the sea. A supervisory body has been established, which can intervene by imposing restrictions and prohibitions in order to prevent or minimize pollution.

B. Case Law

During the year 1970 there have been no court decisions of particular relevance to human rights.

C. International Agreements

During 1970 Norway has not concluded any international agreements relating to human rights outside the United Nations, the specialized agencies or the Council of Europe.

PANAMA

DECREE OF THE COUNCIL OF MINISTERS No. 68 OF 31 MARCH 1970, RESPECTING THE CENTRALIZATION BY THE SOCIAL INSURANCE FUND OF COMPULSORY COVERAGE OF THE RISK OF EMPLOYMENT INJURY FOR ALL WORKERS EMPLOYED BY THE STATE AND PRIVATE UNDERTAKINGS OPERATING IN THE REPUBLIC

SUMMARY

Section 1 of the Decree states that as from the date of commencement of this Decree the Social Insurance Fund* shall be responsible for the administration and management of the compulsory social insurance scheme for employment injuries.

"Employment injury" and "industrial accident" as defined in section 2, mean any accident or sickness to which workers are exposed on account of the work they perform for an employer, and any bodily injury or functional disturbance sustained by a worker in the performance or in the course of his work or in consequence thereof, such functional disturbance having been caused by the sudden or violent action of an external cause or an effort made. Section 2 also notes that employees of the public authorities shall be considered workers.

In section 3 are listed the accidents which are to be deemed industrial. Not to be considered industrial are accidents caused intentionally by the worker and caused by the worker's gross negligence or wrongful act (section 4).

Under section 7, insurance against employment injuries, with Social Insurance Fund, shall be compulsory for every person employed by the State, a municipality or any of the autonomous or semi-autonomous bodies and decentralized public organizations, and for every person employed by physical or juridical person operating within the national territory, irrespective of the number of persons employed.

Other provisions of the Decree deal with wages, benefits, assets and finance, administration of the employment injury insurance scheme, workers' re-instatement, employment injury prevention and sanctions.

The text of the Decree was published in *Gaceta Oficial*, No. 16576, of 3 April 1970. A translation into English of the Decree has been published by the International Labour Office in *Legislative Series* 1970 – Pan. 1.

* See Legislative Decree No. 14 of 27 August 1954 to amend Act No. 134 of 27 April 1943, respecting the Social Insurance Fund.

PHILIPPINES

NOTE*

I. Republican Acts

1. *Education*

Tuition and other school fees; regulation of, and settlement of controversies thereon. – Rep. Act No. 6139, 31 August 1970, 66 O.G., 10847-10851.

Foreign-assisted training programmes; efficacious use of, and assessment of scholarship officers or request in relation to the needs of various government offices. – Ex. Or. No. 217, 21 March 1970, 66 O.G., 3089-3090.

2. *Economic, Social and Human Rights Programme*

Giving priority and prompt attention to the economic, social and human rights programme referred to the Philippine Government, concerning its participation in the United Nations and in other international organizations and conferences. – Ex. Or. No. 216, 21 March 1970, 66 O.G., 3088-3089.

3. *Firearms*

Prohibition to carry outside residence. – Ex. Or. No. 231, 7 May 1970, 66 O.G., 4754-4755.

4. *Monopoly, hoarding, etc., of prime commodities*

An Act providing for the fixing of the maximum selling price of essential articles or commodities, creating the Price Control Council, and for other purposes. – Rep. Act No. 6124, 1 May 1970, 66 O.G., 7574-A – 7574-D.

5. *Nursing*

Application and execution of legal orders in writing of physicians concerning treatments and medication including the application of hypodermic and intramuscular injections. – Rep. Act No. 6135, 31 August 1970, 66 O.G., 10845.

6. *Social justice*

Minimum Wage Law; Increase of, to P8.00 daily, and establishment of a Wage Commission. – Rep. Act No. 6129, 17 June 1970, 66 O.G., 8043.

Policies relative to settlement of land disputes and properties and granting of titles to settlers-farmers who have settled and cultivated lands of the public domain. – Ex. Or. No. 238, 18 June 1970, 66 O.G., 6015-6016.

7. *Taxation*

Stabilization tax on consignments abroad to accelerate the economic development of the Philippines. – Rep. Act No. 6125, 1 May 1970, 66 O.G., 7574-D to 7574-M.

II. Presidential issuances

1. Executive Order No. 229 of 30 April 1970, creating a National Action Council
2. Executive Order No. 238 of 18 June 1970, creating a Committee to study, evolve, and recommend policies relative to the settlement of land disputes and priorities in the granting of titles over public lands
3. Executive Order No. 251 of 31 July 1970, creating a Presidential Action Committee on Land Problems
4. Executive Order No. 263 of 2 October 1970, creating a Committee to study the feasibility of establishing a resettlement area in Montalban, Rizal
5. Executive Order No. 267 of 20 October 1970, creating the Commission on Population
6. Executive Order No. 272 of 16 November 1970, creating a Social Defence Planning Committee
7. Administrative Order No. 200 of 13 January 1970, creating the Presidential Coordinating Committee for Social Justice and Agrarian Reforms
8. Administrative Order No. 212 of 30 March 1970, creating a Committee to effect an early resolution of the land disputes in the Tondo Foreshore Area

* Note furnished by the Government of the Philippines.

9. Administrative Order No. 219 of 15 May 1970, creating the Citizens' Committee on Order and Justice
10. Administrative Order No. 223 of 24 June 1970, creating an Inter-Agency Committee to settle land disputes in Tanay, Montalban and Rizal
11. Administrative Order No. 225 of 1 July 1970, creating the Committee on Crimes Prevention and Treatment as an Action Arm of the Peace and Order Coordinating Council
12. Administrative Order No. 230 of 31 July 1970, creating the Philippine National Committee on Freedom from Hunger Campaign
13. Proclamation No. 641 of 19 January 1970 on the reservation for resettlement purposes of certain parcels of land situated in Pakil, Pangil and Siniloan, Province of Laguna and in the Municipality of Infanta, Province of Quezon, Island of Luzon
14. Proclamation No. 645 of 23 January 1970 on the Citizens' Legal Aid Society of the Philippines nationwide fund campaign
15. Proclamation No. 654 of 13 January 1970, creating the Tondo Condominium Project
16. Proclamation No. 765 of 26 October 1970, reserving for resettlement purposes or urban squatters certain parcels of land of the public domain situated in the municipality of Montalban, Province of Rizal and San Jose del Monte, Province of Bulacan.

III. Supreme Court decisions

1. *Accused, right of*

Cross examination of a witness should be allowed as long as the subject matter of the examination is relevant to the issue. – *People* v. *Jumawan*, L-28060, 27 February 1970, 31 SCRA 825.

The supervisory jurisdiction vested upon the Supreme Court over the Court of Appeals is not intended to give every losing party another hearing. – In *Re Almacen*, L-27654, 18 February 1970, 31 SCRA 562.

In capital offences, trial courts should observe the procedure of accepting plea of guilty by the accused. – *People* v. *Englatera*, L-30820, 30 July 1970, 34 SCRA 245; Plea of guilty – *People* v. *Espejo* L-27708, 19 December 1970, 36 SCRA 400.

New trial is granted where the testimonies of the witnesses on certain crucial matters could not be presented at the trial due to no fault of the accused. – *People* v. *Gensola*, L-24491, 11 August 1970, 34 SCRA 383.

Speedy trial. Where the trial judge who heard the case had been transferred elsewhere, without assurance when he would return, public policy demands that the case be acted on and not be delayed indefinitely. *De Guzman* v. *Aquino*, L-29134, 31 July 1970, 34 SCRA 236.

The right to a speedy trial means one free from vexatious, capricious and oppressive delays, *Acebedo* v. *Sarmiento*, L-28025, 16 December 1970, 36 SCRA 247.

Right of accused to be informed of charge against him. An amendment of the information which changes the nature of the offence charged in the complaint subject of a formal preliminary investigation constitutes an undue advantage over the accused. *Bandiala* v. *Court of First Instance of Misamis Occidental*, L-24652, 30 September 1970, 35 SCRA 237.

Guilt of accused must be proved beyond reasonable doubt. The doctrine that conclusions of trial court on credibility of witnesses are not to be disturbed, must bow to the rule that the guilt of the accused must be proved beyond reasonable doubt. *People* v. *Pagkaliwagan*, L-29948, 26 November 1970, 36 SCRA 113.

2. *Adoption*

A person who has already an adopted child may still adopt another. – *Hofileña* v. *Republic*, I-26476, 31 August 1970, 34 SCRA 545.

3. *Arrest*

Irregularity in the issuance of orders of arrest are waived by posting of bail bond. *Bermejo* v. *Varrios*, L-23614, 27 February 1970, 31 SCRA 764.

The warrant of arrest issued by the Immigration Commissioner is confined to those necessary for the execution of a final deportation order. *Contemprate* v. *Acting Commissioner of Immigration*, 35 SCRA 623.

Executive Order 106, series of 1937, embodying fundamental rules and regulations on the arrest of officers and enlisted men of the armed forces is directory. *People* v. *Tiro*, L-32479, 16 December 1970, 36 SCRA 268.

4. *Assembly, Right of*

The City Mayor of Manila possesses reasonable discretion to determine or specify the streets or public places to be used for holding rallies or demonstrations. – *Navarro* v. *Villegas*, L-31687, 18 February 1970, 31 SCRA 731.

5. *Citizenship*

The citizenship of person to be stricken from the list of voters may be decided in the exclusion proceedings. L-28228, 31 August 1970, 34 SCRA 424.

Repatriation could be effected by merely taking the necessary oath of allegiance to the

Republic of the Philippines and registration in the proper civil registry. *Cabscug* v. *Lao*, L-27036, 26 November 1970, 36 SCRA 92.

6. *Deportation*

The right of judicial review of the decision of the Immigration Commissioner comes in after the termination of the deportation proceedings. *Calacday* v. *Vivo*, L-26681, 29 May 1970, 33 SCRA 413.

7. *Due process*

Where a party was given a chance to be heard with respect to his motion for reconsideration there is sufficient compliance with the requirements of due process. *Aguilar* v. *Tan, et al.*, L-23631, 30 January 1970, 31 SCRA 205.

Section 4 of Republic Act 6132 is merely an application of and in consonance with the prohibition of Section 2 of Article XII of the Constitution and does not constitute a denial of due process or of the equal protection of the law. *Imbong* v. *Comelec*, L-32432, 11 September 1970, 35 SCRA 28.

A decision rendered by the Civil Service Commissioner rendered without investigation and without first affording the respondent an opportunity to defend himself violated the principle of due process. *Rodriguez* v. *Reyes*, L-26396, 28 December 1970, 36 SCRA 502.

Parties must be given a day in court. — *Universal Textile Mills, Inc.* v. *The Court of Industrial Relations* L-31287, 29 December 1970, 36 SCRA 619.

Due process is provided for in Section 2303 of the Tariff and Customs Code, which requires the Collector to give the owner of the property written notice of the seizure and an opportunity to be heard in relation to the delinquency which was the occasion for such seizure. *Commissioner of Customs* v. *Alikpala*, L-32542, 26 November 1970, 36 SCRA 208.

A party must be given an opportunity to be heard, otherwise the writ issued against it is void. *Luzon Surety Co., Inc.* v. *Beson*, L-26865-66, 30 January 1970, 31 SCRA 313.

8. *Double jeopardy*

Acquittal of defendant is not reviewable by appeal or *certiorari*. — *City Fiscal of Cebu* v. *Kintanar*, L-31842, 30 April 1970, 32 SCRA 601.

9. *Elections*

As a rule, the Supreme Court will not interfere with the constitutional duty of the Commission on Elections to ensure free elections. — *Ligot* v. *Commission on Elections*, L-31380, 21 January 1970, 31 SCRA 45.

The term "foreigner" in Section 39 of the Revised Election Code includes both natural and juridical persons. — *Gatchalian* v. *Commission on Elections*, L-32560-61, 22 October 1970, 35 SCRA 435.

10. Ex post facto *Laws*

Sections 8 *(a)* and 18 of Republic Act 6132 are not *ex post facto* laws. L-32485, 22 October 1970, 35 SCRA 429.

11. *Expropriation*

The doctrine of immunity from suit does not apply to expropriation proceedings. *Commissioner of Public Highways* v. *San Diego*, L-30098, 18 February 1970, 31 SCRA 616.

State sued without its consent as a defence in action for nullity of statute. — *J. M. Tuason & Co., Inc.* v. *The Land Tenure Administration*, L-21064, 18 February 1970, 31 SCRA 413.

The court that hears the expropriation cases has the jurisdiction to determine, in the same proceeding, the conflicting claims of ownership of the condemned property and adjudge the rightful owner thereof. — *Republic* v. *Court of First Instance, Pampanga*, L-27006, 30 June 1970, 33 SCRA 527.

12. *Expropriation*

The ownership of a waterworks remains with the municipality until just compensation is fully paid. — *Municipality of Paete* v. *National Waterworks and Sewerage Authority*, L-21576, 29 May 1970, 33 SCRA 122.

Republic Act 2616 expropriating Tatalon Estate in Quezon City is constitutional. L-21064, 30 June 1970, 33 SCRA 882.

13. *Equal protection*

Equal protection clause of the Constitution. Congress has power to impose restrictions as long as such restrictions do not contravene the Constitution. *In Re Subido* L-32436, 9 September 1970, 35 SCRA 1.

The slight limitation of the freedom of expression of the individual expressed in Section 12 *(f)* of Republic Act 6132 is only one of the many devices employed by the law to prevent a clear and present danger of the perversion and protistution of the electoral apparatus and of the denial of the equal protection of the laws. — *Badoy* v. *Comelec*, L-32545, 17 October 1970, 35 SCRA 285.

Classification will constitute no violation of the individual's right to equal protection as long as it is not unreasonable. — *Tan Ty* v. *Land Tenure Administration*, L-27971, 16 October 1970, 35 SCRA 250.

14. *Government service insurance system*

Insurance proceeds of insurance policies issued to government employees are exempt from attachment or liens except when obligations or indebtedness to the Government Service Insurance System are concerned. – *Picar* v. *Gsis*, L-25803, 29 May 1970.

15. *Guardianship*

California decisions are not applicable in the Philippines. – *Zafra-Sarte* v. *Court of Appeals*, L-23976, 30 March 1970, 32 SCRA 175.

The court cannot, *motu proprio*, order the closure or termination of a minor's guardianship case, unless he should ask for it, nor without granting him a hearing, or receiving evidence of some kind to determine if such a step be taken or not. – *De Guzman* v. *Aquino*, L-29134, 31 July 1970, 34 SCRA 236.

16. *Habeas corpus*

The writ of *habeas corpus* is available to relieve persons from unlawful detention. – *Celeste* v. *People*, L-31435, 30 January 1970, 31 SCRA 391.

The remedy of *habeas corpus* cannot be considered where the person alleged to be thus deprived of his liberty is in custody of an officer like the Director of Prisons by virtue of a judgement of a court of record. – *Canary* v. *Director of Prisons*, undocketed Nos. 507-508, 26 November 1970.

17. *Judgement*

Judgement for a sum of money rendered by foreign court cannot be enforced in the Philippines if it was rendered upon a clear mistake of law. – *Nagarmull* v. *Binalbagan-Isabela Sugar Co., Inc.*, L-22470, 28 May 1970, 33 SCRA 46.

18. *Land tenure administration*

Acquisition of land from the Government – a sublessee as an actual occupant may be given preference. – L-27651, 30 October 1970, 35 SCRA 601.

19. *Marriage*

The marriage of an alien woman to a Filipino citizen does not *ipso facto* make her a Filipino citizen. – *Yap Joaquin* v. *Galang*, L-29132, 29 May 1970, 33 SCRA 362.

The marriage is subject to collateral attack in the intestate proceedings instituted by the judicial administration for the forfeiture of the husband's share in the conjugal property, where the marriage contracted is bigamous and null and void. – *Gomez* v. *Pipana*, L-23214, 30 June 1970, 33 SCRA 615.

20. *Name, change of*

The true name of the party whose name is sought to be changed should be set forth in the title of the case and of the notice published in connexion therewith. – *Ma Chik Kin* v. *Republic*, L-28051, 28 July 1970, 34 SCRA 4.

In a change of name, the publication required by law must give that true or official name of the petitioner. – *Rendor* v. *Republic*, L-26198, 35 SCRA 262.

21. *Naturalization*

Court cannot *motu proprio* reopen and review final judgements of competent courts granting certificates of naturalization to aliens. – *Queto* v. *Catolico*, L-25219, 23 January 1970, 31 SCRA 52.

Failure to mention in the petition present and former place of residence is fatal. – *Tan Tiu* v. *Republic*, L-21558, 30 January 1970, 31 SCRA 124.

The motion for withdrawal of the petition for naturalization is addressed to the sound discretion of the trial court. *Ang* v. *Republic*, L-22216, 30 January 1970, 31 SCRA 146.

The 30-day period of appeal in naturalization cases allowed the Government is counted from notice of decision to Solicitor General, not to the Provincial Fiscal. *Republic* v. *Yap*, L-25519, 30 January 1970, 31 SCRA 261.

Lucrative income is determined as of the date of filing of the petition. *Sy* v. *Republic*, L-24857, 17 February 1970, 31 SCRA 408.

A "credible" person is not merely an individual without a previous conviction of crime; who is not merely a police character and has no police record; who has not perjured in the past or whose affidavit or testimony is not incredible, but must be a person with a good standing in the community, reputed to be trustworthy and reliable, whose word may be taken on its face value as a good warranty of the integrity and trustworthiness of petitioner. – *Siao Tick Chong* v. *Republic*, L-22151, 30 March 1970, 32 SCRA 253.

The alleged harassment or revenge imputed to the Office of the Solicitor General will not defeat the right of the Republic to interpose an appeal in a naturalization proceedings. – *Republic* v. *Cloribel*, L-27281, 30 June 1970, 33 SCRA 795.

The failure of the applicant to include in the publication his alias is a ground for the denial of his petition for naturalization. – *Republic* v. *Borromeo*, L-26970, 29 May 1970, 33 SCRA 163.

Where the applicant used an alias without the proper authority of the court his petition for naturalization should be denied. – *Lim* v. *Republic*, L-19835, 29 May 1970, 33 SCRA 291.

A Chinese woman may not be lawfully naturalized as a citizen of the Philippines separately from her husband – also a citizen of the Republic

of China. – *Po* v. *Republic*, L-30669, 31 July 1970, 34 SCRA 242.

The continued stay of wife and children of an applicant for Filipino citizenship has become illegal where the said petition for citizenship was denied. – *Tan Ka Ho* v. *Commissioner of Immigration*, L-24307, 31 August 1970, 34 SCRA 531.

To impart benefits of exemption from the declaration of intention, petitioner's primary and secondary education, in addition to birth in the Philippines, must have been received in public schools or those recognized by the Government and not limited to any race or nationality. – *Luy* v. *Republic*, L-28860, 24 July 1970, 34 SCRA 1; *Gan Y. Guan* v. *Republic*, L-26196, 31 July 1970, 34 SCRA 22.

Where income of petitioner not considered lucrative. – *Que Tee Tiao* v. *Republic*, L-22497, 31 July 1970, 34 SCRA 34; *Ong Chiong* v. *Republic*, L-27622, 31 July 1970, 34 SCRA 145.

Failure to state an alias is a sufficient ground for denial of petition for naturalization. – *Republic* v. *Yap*, L-26820, 31 July 1970, 34 SCRA 220; *Choa Tion Chong* v. *Republic*, L-25608, 31 August 1970, 34 SCRA 540.

Where filing of amended petition for denaturalization for noncompliance of Section 7 of the Naturalization Law could serve no practical purpose. – *Republic* v. *Co Keng*, L-19829, 31 August 1970, 34 SCRA 668.

Neither estoppel nor *res judicata* may be set up to bar the State from initiating appropriate proceedings for the cancellation or nullification of the certificate of naturalization. – *Republic* v. *Reyes*, L-28175, 19 August 1970, 34 SCRA 396.

The government must be represented at the hearing on the evidence required to be received by the court after the two-year period from the promulgation of the decision granting the application. – *Republic* v. *Cloribel, Ibid.*

22. *Obligations and contracts*

The approval of contract of municipality by the provincial governor is a statutory formal requirement for its validity. – *Pechueco Sons Company* v. *Provincial Board of Antique*, L-27038, 30 January 1970, 31 SCRA 320.

A contract has the force of law between the parties. – *Lazo, et al.* v. *Republic Surety & Insurance Co., Inc.*, L-27365, 30 January 1970, 31 SCRA 329.

The burden of proof of obligation devolves upon the one who seeks to enforce their performance, and that of their extinction upon the one opposing it. – *Santiago Virginia Tobacco Planters Association, Inc.*, v. *Phil. Virginia Tobacco Administration*, L-26292, 18 February 1970, 31 SCRA 528.

The obligation of the contractor under Article 1715 of the Civil Code to execute the work in such a manner that it has the qualities agreed upon and is free from defects which destroy or lessen its value or fitness is not absolute. – *The Philippine American Life Insurance Company* v. *Santamaria*, L-26719, 27 February 1970, 31 SCRA 798.

Where the bill of assignment of trademark and formula was interpreted to have been intended by the parties to refer only to assignment of use of trademark and formula. – *Universal Food Corporation* v. *Court of Appeals*, L-29155, 13 May 1970, 33 SCRA 1.

The express language of article 1174 of the new Civil Code compels the conclusion that in the absence of a legal provision or an express covenant no one should be held to account for fortuitous cases. – *Dioquino* v. *Laureano*, L-25906, 28 May 1970, 33 SCRA 65.

An action for declaratory relief may be entertained only before breach or violation of the law or contract to which it refers. – *Reparations Commission* v. *Northern Lines, Inc.*, L-24835, 31 July 1970, 34 SCRA 203.

Obligation requiring payment in foreign currency must be discharged in Philippine currency as provided by Republic Act No. 529. *Kalalo* v. *Luz*, L-27782, 31 July 1970, 34 SCRA 337.

An issue of whether or not there is compliance with the law and the contract between the parties is within the competence of the Industrial Court. – *Manila Hotel Company* v. *Pine Hotel Employees Association, et al.*, L-24314, 28 September 1970, 35 SCRA 96.

The alleged breach of the terms and conditions of the insurance contract have nothing to do with whether the claimants-employees are entitled to the compensation benefits asserted, but rather to the contractual relations between the insurer and the insured. – *Philippine British Assurance Co., Inc.* v. *Mangune*, L-24902, 26 November 1970, 36 SCRA 87.

23. *Ordinance*

Strict enforcement of the tax law does not make tax ordinance unjust and discriminatory. – *Northern Philippines Tobacco Corporation* v. *Municipality of Agoo, La Union*, L-26447, 30 January 1970, 31 SCRA 304.

24. *Patent*

A homestead patent issued over a piece of land removes it from public domain. – *Dela Cruz* v. *Reano*, L-29792, 31 August 1970, 34 SCRA 585.

25. *Press, Freedom of*

View that for liability in damages to arise from an alleged libellous publication, without offending press freedom, there is need to prove that the publication was made with actual malice. – L-26549, 31 July 1970, 34 SCRA 116.

26. *Security of tenure*

A college dean of the University of the Philippines enjoys security of tenure. – *Sta. Maria* v. *Lopez*, L-30773, 18 February 1970, 31 SCRA 637.

27. *Social justice*

No provision of the Workmen's Compensation Act should be interpreted as to deny protection to the labouring elements and their dependants and thus frustrate the constitutional objective of social justice. – *Vda. De Macabenta* v. *Davao Stevedore Terminal Company*, L-27489, 30 April 1970, 32 SCRA 553.

28. *Seizure*

Where the judge ordered the seizure of a property on the ground that it was stolen from its rightful owner, the dismissal of the complaint for theft by the fiscal's office does not render the judge remiss in the performance of his duties as to cause him dismissal if he fails to return the property seized to the person from whom it was seized. – *Azucena* v. *Muñoz*, Adm. Case No. 130-J., 30 June 1970, 33 SCRA 722.

29. *Speech, Freedom of*

The Commission on Elections, in prohibiting the use of taped jingle for campaign purposes in the election of delegate to the constitutional convention did, in effect, impose censorship, an evil against which the constitutional right of free speech is directed. – *Mutuc* v. *Commission on Elections*, L-32717, 26 November 1970, 36 SCRA 228.

30. *State*

The doctrine of non-suability of the State has no application where the suit against the public official concerned had to be instituted because of his failure to comply with the duty imposed by the statute appropriating public funds for the benefit of petitioner. – *Begosa* v. *Chairman, Philippine Veterans Administration*, L-25916, 30 April 1970, 32 SCRA 466.

The doctrine of non-suability of the State is a logical corollary of the positivist concept of law which negates the assertion of any legal right as against the State, in itself the source of the law on which such right may be predicated. – *Switzerland General Insurance Company, Ltd.*, v. *Republic*, L-27389, 30 March 1970, 32 SCRA 227.

The doctrine of immunity of the State from suits does not apply to unauthorized acts of public officers. – *Director of the Bureau of Telecommunications* v. *Aligaen*, L-31135, 29 May 1970, 33 SCRA 368.

An action brought by a veteran to establish his rights under the Veteran's Bill of Rights in Republic Act 65, against the Philippine Veterans Administration is not a suit against the State. – L-25619, 30 June 1970, 33 SCRA 585.

31. *Strike*

When the Industrial Court must decide legality of strike in certified case before passing on economic demands of the workers. – *National Power Corporation* v. *National Power Corporation Employees and Workers Association*, L-26169, 30 June 1970, 33 SCRA 806.

32. *Taxation*

Revenues derived from foreign exchange transactions are taxed by computing the taxpayer's receipts at the free market rate of the Philippine peso to the U.S. dollar. – *Commissioner of Internal Revenue* v. *Royal Interocean Lines*, L-26806, 30 July 1970, 34 SCRA 9.

33. *Tenancy*

Delay in payment of rentals does not justify the drastic remedy of ejectment under Section 50 *(b)* of Republic Act 1199. – *Tañedo* v. *De La Cruz*, L-27667, 25 March 1970, 32 SCRA 63.

34. *Trademarks and tradenames*

The determining factor in a contest involving registration of trademark is not whether the challenged mark would actually cause confusion or deception of the purchasers but whether the use of such mark would likely cause confusion or mistake on the part of the buying public. – *American Wire & Cable Company* v. *Director of Patents and Central Banahaw*, L-26557, 18 February 1970, 31 SCRA 544.

Section 4 *(c)* of Republic Act 166 does not include non-registrable tradenames bearing names of wives of presidents. – *De La Rama Steamship Co.* v. *National Development Co.*, L-26966, 30 October 1970, 35 SCRA 567.

POLAND

NOTE*

I. Legislation

1. *Regulations relating to industrial safety and health*

Ordinance of the Minister of Municipal Economy of 25 February 1970 concerning safety and health standards in the employment of chemicals for purifying water and effluents in enterprises and work-places subject to the Ministry (*Law Gazette*, No. 6, para. 52);

Ordinance of the Minister of Culture and Art of 28 April 1970 concerning safety and health standards in film production (*Law Gazette*, No. 12, para. 113);

Ordinance of the Minister of Mining and Power of 9 May 1970 concerning safety and health standards in power plants and other plants with electricity-generating installations (*Law Gazette*, No. 14, para. 125);

Ordinance of the Minister of Health and Social Welfare of 25 May 1970 concerning safety standards in X-ray laboratories and the rules of handling X-ray apparatus (*Law Gazette*, No. 18, para. 142).

2. *Additional leave in connexion with unhealthy working conditions*

Ordinance of the Council of Ministers of 20 January 1970 concerning additional leave for certain categories of employees of plants subject to the Ministry of Engineering (*Law Gazette*, No. 2, para. 10).

Employees engaged in unhealthy occupations, as specified in the schedules to the Ordinance, are entitled to extra paid leave of 12 working days per calendar year.

3. *Extension of the range of pension and social security benefits*

Ordinance of the Council of Ministers of 8 January 1970 concerning the social insurance of persons engaged in marine fishing as a private business and in rafting tourists on the River Dunajec (*Law Gazette*, No. 1, para. 4).

Benefits embrace medical care, old-age pension, disability pension, funeral allowance, benefits in kind for pensioners.

4. *Increases in minimum wages, pensions and family allowances*

Resolution of the Council of Ministers and the Central Council of Trade Unions of 30 December 1970 concerning increases in wages, special allowances for certain categories of employees, increases in family benefits and certain pensions (*Monitor Polski*, No. 44, para. 352).

5. *Protection of juvenile labour*

Government Declaration of 17 February 1970 concerning ratification by the Polish People's Republic of the Convention (No. 123) on the minimum age for admission to underground work in mines, adopted in Geneva on 22 June 1965 (*Law Gazette*, No. 8, para. 63).

6. *Education and Science*

Resolution No. 140 of the Council of Ministers of 19 August 1970 concerning study grants for doctors undergoing specialized training (*Monitor Polski*, No. 28, para. 234).

These grants have been increased.

7. *Public Health*

Health Standards of Foodstuffs and Provisioning Act of 25 November 1970 (*Law Gazette*, No. 29, para. 245).

The Act lays down the standards that must be met in the production of foodstuffs and beverages and in the distribution of these articles in order to guarantee the protection of the health of the public. It introduces comprehensive legislation to a field previously governed by a number of separate enactments.

* Note furnished by the Government of the Polish People's Republic.

Ordinance of the Minister of Health and Social Welfare of 9 April 1970 concerning health care of students undergoing vacation training (*Monitor Polski*, No. 12, para. 108).

This provides for a free preliminary medical examination to test their ability to perform manual labour and, during the course of the training period, for medical attention to be provided by factory dispensaries or the industrial health service.

8. *Protection of the natural environment*

Ordinance of the Council of Ministers of 9 June 1970 concerning the maximum permissible degree of water pollution and the conditions of discharging effluents into water or soil (*Law Gazette*, No. 17, para. 144).

Ordinance of the Council of Ministers of 9 June 1970 concerning the principles of specifying the level of fines for harmful pollution of water and the procedure for exacting them (*Law Gazette*, No. 17, para. 145).

Both these ordinances up-date and tighten the regulations issued in 1962.

II. Supreme Court Rulings

Judgement of 5 March 1970 (I PR 2/70)

"Employers are required to assure employees safe working conditions precluding hazards to their life or health. This also imposes upon them the obligation of guaranteeing a safe working environment. It is an infringement of this obligation if an employer, knowing a hazard to the life or health of an employee has been created by the illegal behaviour of another employee, fails to take all possible action to remove such a hazard."

Resolution of 7 April 1970 (III CZP 17/70)

"The operation of an enterprise (industrial plant) as such is of course in compliance with the law and under its protection. If such operation becomes the cause of damage to the person or property of another subject, this occurrence automatically, under article 435 of the Civil Code, gives rise to the liability of the persons specified in its provisions and requires reparation to be made without the need to inquire whether there has been a possible infringement of the law in the operation of the enterprise (plant).

"If therefore chemical substances discharged by an industrial plant inflict damage to the health or property of a citizen in excess of the normal consequences caused by the general deterioration of the natural environment in a given area, such damage, having a normal causal relationship with the discharge of chemical substances, constitutes damage within the meaning of article 361 of the Civil Code, the infliction of which meets the stipulations of article 435 of the Civil Code, and accordingly the industrial plant responsible for the discharge of poisonous substances into the atmosphere is required to repair it on the basis of this regulation.

"In considering liability for such damage it is immaterial whether the concentration of the discharged substances exceeded the standards laid down in the Protection of the Air from Pollution Act of 21 April 1966 (*Law Gazette*, No. 14, para. 87) or complied with them."

Resolution of a Panel of seven Judges of 12 June 1970 (III PZP 46/69)

"An employee may demand a change in the references given him by a work-place in other cases than when its wording is defamatory (articles 23 and 24 of the Civil Code). The issuing of references which cannot be regarded as objective in the circumstances of a given case constitute an infringement by the work-place of the obligation imposed by the contract of employment linking both parties. The employee has a legal interest therefore in demanding that a document which is intended essentially to help him seek employment contain truthful information and an honest assessment.

"Work is a right, obligation and matter of honour for every citizen. Hence references issued by a work-place to an employee, which display elements of arbitrariness, may not be left outside the protection of the law."

Judgement of 21 April 1970 (I PR 60/70)

"In keeping with paragraph 69 of the list of occupations barred to women, forming part of the schedules to the Ordinance of the Council of Ministers of 28 February 1951 (*Law Gazette*, No. 12, para. 96), it is not permitted to assign to pregnant women and nursing mothers the functions of driver of a motor vehicle not only as a full-time occupation but even on an occasional basis."

III. International Agreements

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity came into force in the Polish People's Republic on 11 November 1970.

ROMANIA

NOTE*

I. Regulations concerning the right to work and to just and favourable conditions of work

(Article 23 of the Universal Declaration of Human Rights)

1. Act No.1 concerning labour organization and discipline in State socialist units, published in *Buletinul Oficial* No. 27, dated 27 March 1970.

In the Socialist Republic of Romania, every citizen has the right and the opportunity to work in any field, whether economic, social or cultural, in accordance with his training and the needs of society.

Workers receive as remuneration a share of the national income earmarked for consumption, depending on the amount and the quality of the work performed. At the same time, they are entitled to benefit from the material and monetary resources made available by the State, for the use of the entire population, for the development of education and culture, public health protection, and social insurance and assistance.

In their dual capacity as owners and producers, workers are responsible to society not only for fulfilling their own service obligations but also for contributing to the accomplishment of the tasks of the unit as a whole, within the framework of the general plan for the economic and socio-cultural development of the country, and for ensuring order and discipline in production and protecting and consolidating socialist property.

The strengthening of discipline at work and the improvement of the activities of the socialist units contribute to a better utilization of the country's material and human potential and to the mobilization of the working masses for the implementation of the programme established with a view to creating a multilaterally developed socialist society.

The law contains provisions regarding the obligations of unit managers, the rights and obligations of employees, the conclusion of the work contract, the establishment of uninterrupted length of service in the same unit and of uninterrupted length of service in employment, rewards and penalties, internal order regulations and disciplinary statutes.

The first article of the Act provides that the managing bodies of the State socialist units – in industry, agriculture, construction, transport, distribution of goods, scientific research and other branches of the economy – are responsible to the State and to their employees, collectives for the judicious organization of all activities for the preservation of public property, for the good management of material and monetary resources and for adoption of the necessary measures to ensure the punctual completion of tasks according to plan and for ensuring the observance of the principles and norms of discipline.

According to article 4 of the Act, as soon as a worker enters employment in a State socialist unit, he becomes a member of the labour collective and enjoys the following rights:

(a) A salary corresponding to the quantity and quality of the work performed, salary increases for work performed under special conditions, and other increases and allowances;

(b) Paid weekly leisure time and annual leave;

(c) Material assistance under the State social insurance scheme in the event of temporary disablement or maternity, for the care of sick children, for convalescence and recovery of health, and for cases of death in the family, and also free medical assistance and facilities for treatment at health resorts;

(d) Reduced working schedule when work is performed under harmful or hazardous conditions or when, for health reasons, the medical authorities prescribe such a schedule;

(e) A State children's allowance; the use of crèches and nursery schools;

(f) Suitable labour protection conditions and special protection measures for women and young persons;

(g) Support and facilities for the improvement of professional qualifications;

(h) The opportunity to vote or be elected in the collective management body of the unit, to express opinions on any problem relating to its activities, to participate in the employees' general assembly, to submit proposals and suggestions to the managing body of the unit, to request per-

* Note transmitted by the Government of the Socialist Republic of Romania.

mission to participate in the meetings of the collective management body when it is discussing the work of the sectors in which the employee works, and to be informed of his work record, as prepared by his superiors;

(i) The opportunity to appeal to the organ immediately above or to the organ with jurisdiction in labour matters, if measures are taken which he considers detrimental to the interests of the unit or to any personal rights;

(j) Facilities for obtaining State-owned housing and for obtaining a loan to build a privately-owned dwelling;

(k) Old age or disability pensions.

Article 5 specifies the general obligations of employees:

(a) To adhere to the work programme and devote all their working hours to the fulfilment of their service obligations;

(b) To assimilate and observe the established technological and work processes, to use installations in accordance with the operation of specifications set forth in the technical documentation, to make intensive use of all working resources, and to use raw materials and equipment in a rational manner;

(c) Continually to improve their professional qualifications with a view to accomplishing tasks according to plan, constantly to improve the quality of products and operations, and to increase productivity;

(d) To comply with labour protection regulations, and with regulations concerning the use of safety and working equipment, to prevent fires or any other situation that might endanger buildings, the installations of the unit, or the life, physical integrity or health of any person;

(e) To comply with the regulations concerning official secrets;

(f) To protect and properly administer socialist property, to participate actively in the analysis and discussion of general problems relating to the activities of the unit, with a view to constantly improving it;

(g) To behave correctly, to promote mutual assistance among all members of the work collective, to combat inadequacy, to act in the spirit of the communist approach to work and society.

The rewards provided for in article 12 include the following: distinctions awarded for work performed; inscription in the book of honour; decorations and medals; granting of higher steps or grade in addition to the base salary in keeping with the provisions of the law; bonuses and prizes; other rewards in the form of money or articles, free excursions, etc.

With regard to penalties, article 13 provides as follows:

Culpable infringement by any employee – regardless of position – of his service obligations, including the norms of behaviour, are penalized, as appropriate, by:

"*(a)* A reprimand;

"*(b)* A warning;

"*(c)* Withdrawal of one or more salary grades or steps for a period of one to three months;

"*(d)* Demotion in position or category, within the same profession;

"*(e)* Disciplinary termination of work contract.

"Disciplinary penalties shall be applied only after investigation of the occurrence constituting the infringement and after the employee has had a hearing and the arguments presented in his defence have been verified."

2. Act No. 4, concerning the organization of production and labour in agriculture, published in *Buletinul Oficial* No. 79, dated 10 July 1970.

Agriculture, a fundamental branch of the national economy, plays an important role in supplying the population with agricultural food products, in supplying industry with agricultural raw materials, in producing exports and in creating national revenue.

The development of agriculture is a decisive factor in the effort to raise the standard of living of the rural population and of the population as a whole – an essential prerequisite for social progress.

The State provides all-round support for socialist agricultural units and other agricultural producers by providing them with technical and material resources, investment and production loans, the necessary means for carrying out mechanized agricultural operations, for land improvement and for eliminating pests, specialized technical assistance, advantageous conditions for product valorization, facilities for improving the qualifications of personnel and other advantages provided for under the law.

Agricultural production, which is becoming increasingly similar in profile to industrial production, calls for a higher degree of labour organization, the widespread application of advanced scientific and technological knowledge, and the judicious use of all the means of production in order to ensure a high level of productivity and economic efficiency.

In their dual capacity as owners and producers, the members of agricultural co-operatives and workers in the agricultural sector have the responsibility of contributing to the implementation of production plans and to the improvement of agricultural activities as a whole.

The Act regulates the activities and responsibilities of the central and local State administrative organs and of the agricultural co-operatives, establishes rules regarding the use of land resources, agricultural technology work and compulsory agricultural and zootechnical measures, the obligations and rights of employees of State agricultural units, of agricultural co-operatives and of other agricultural producers, and liability and penalties in connexion with offences against the Act.

3. Decree No. 158 concerning the placement in production of graduates of day courses in institutions of higher education, published in *Buletinul Oficial* No. 59, dated 8 June 1970.

In accordance with the provisions of the Constitution relating to the right to work of citizens of the Socialist Republic of Romania, the State ensures jobs for graduates of institutions of higher education, compatible with the training they have received in their faculty. To this end, graduates of day courses at institutions of higher education are placed in production, concluding a work contract with the socialist organizations in which they are appointed, in accordance with the provisions in force. They are placed in economic organizations, teaching establishments, scientific research and design units, socio-cultural institutions or other socialist organizations.

To complete their training, graduates of day courses at institutions of higher education who are placed in units of production work as trainees in the specialized field in which they have studied.

The decree lays down regulations concerning placement in production and specifies the rights and obligations of the socialist organizations to which graduates are assigned and the rights and obligations of the graduates.

II. Regulations concerning the right to an adequate standard of living

(Article 25 of the Universal Declaration of Human Rights)

Decision of the Executive Committee of the Central Committee of the Romanian Communist Party, the State Council and the Council of Ministers, concerning increases in the salary scale, reductions and adjustments in the tax on salaries and other income, published in *Buletinul Oficial* No. 40, dated 29 April 1970.

The success achieved by the Romanian people in establishing and modernizing the technological and material foundations of society, the increase in national wealth and the continual socio-economic development of the country have provided the material conditions necessary for the application of new measures further to raise the standard of living of the workers, one such measure being the decision mentioned above.

An analysis of the correlation between the salaries of the various categories of employee has shown the need to raise the lower salaries in order to achieve a better correspondence between the incomes of workers and thus a stricter application of the principles of equity and social justice.

The decision provides as follows:

"1. As of 1 May 1970, the fixed minimum salary for the national economy shall be established at 800 lei per month. This represents an increase of 14.3 per cent over the minimum salary of 700 lei established in August 1967.

"As of the same date, all base salaries of not less than 1200 lei shall be increased. The increase shall be effected by salary group, the major increases being granted to persons receiving salaries of up to 1000 lei.

"Additional salary funds, amounting to 600 million lei a year shall be allocated for the implementation of these measures.

"2. Employees who, as a result of the increases provided for above, earn a salary above the salary ceilings for various entitlements or facilities shall continue to enjoy such benefits.

"3. As of 1 May 1970, improvements will be made in the system for the establishment of taxes on salaries and other income, with a view to ensuring more consistent application of the principle of progressivity, to benefiting workers with small incomes, and to simplifying the procedure for the calculation of taxes.

"To this end, the income from salaries of up to 850 lei received by all categories of workers shall be exempt from tax.

"Likewise, in the case of income from salaries received as of May 1970, the tax shall be reduced as follows:

"By 30 per cent for salaries of 850-900 lei;

"By 20 per cent for salaries of 901-1000 lei;

"By 11 per cent for salaries of 1001-1100 lei;

"By 3 per cent for salaries of 1101-1210.

"Owing to these reductions, employees earning up to 1200 lei will benefit from additional incomes of some 350 million lei a year. Taxes on salary incomes of 1200 to 1700 lei remain unchanged.

"Taxes on income derived from salaries of over 1700 lei, income in addition to that derived from the basic activity, and income earned from literary, artistic, scientific works and other activities, will be recalculated in accordance with the principle of progressivity."

As a result of the salary increases and the tax exemptions and reductions employees with incomes of up to 1200 lei per month – totalling two million – will receive additional income of about one thousand million lei a year.

III. Regulations concerning protection and assistance for children

(Article 25, paragraph 2, of the Universal Declaration of Human Rights)

Act No. 3 concerning the system for the protection of certain categories of minor, published in *Buletinul Oficial* No. 28, dated 28 March 1970.

The Act regulates the protection of minors in families which lack the necessary conditions to ensure their normal physical, moral and intellectual development.

In this field, the People's Councils will have important responsibilities, as in the exercise of their powers as tutelary authority, they have the task of supervising the upbringing and education

of children and assisting those who need special protection from the State.

The Act is also designed to remedy certain omissions or inadequacies in earlier legislation on the protection of minors.

The main provisions of this Act relate to:

(a) The establishment of categories of minors needing special protection from the State, in terms of their particular problems, i.e.:

Minors who have no family (whose parents have died, disappeared or are serving a sentence involving deprivation of liberty, etc.) and have no other relatives to care for them;

Handicapped minors who cannot be brought up in the family;

Minors whose health or physical, moral or intellectual development is jeopardized in the family;

Minors whose behaviour makes it necessary to take special protective measures;

(b) The classification of institutions for the protection of minors according to their age, psychosomatic development, schooling and professional training;

(c) The creation of special re-educational schools, under the Ministry of Labour, for minors who are in danger of committing acts punishable under penal law and who, because of their behaviour, help to encourage vice or immoral practices among other minors, as well as for minors who have committed acts punishable under penal law but who are not criminally liable;

The Ministry of the Interior will in future be concerned only with minors who are criminal offenders.

(d) The provision of State support, in establishments for the protection of minors, through family placement and by entrusting minors to families or individuals until the completion of their compulsory schooling or, as appropriate, until the completion of post-general studies, but not beyond the age of 25 years. So that the period of protection is correlated to the period of schooling and the provisions of the legislation on pensions;

(e) The creation of commissions for the protection of minors within the executive committees of the District People's Councils and the People's Council of the municipality of Bucharest. These commissions will co-ordinate the activities of all local State and public organs which are concerned with problems relating to the protection of minors, such as education, health, social assistance, militia labour unions, youth and women's organizations, and which are responsible for training the community to recognize and solve these problems.

A central commission will be set up under the Ministry of Labour to co-ordinate, on a country-wide basis, all activities connected with the protection of youth. This commission will be composed of delegates from the central State and public organs dealing with this subject and of other specialists;

(f) The establishment of the principle that expenses relating to the protection of minors should be borne by the State; likewise, it is stipulated that parents or persons who are legally responsible for supporting minors in respect of whom protective measures have been taken, must make contribution to the State, based on their ability to pay.

IV. Regulations concerning assistance to persons studying in educational establishments

(Article 26 of the Universal Declaration of Human Rights)

Decision No. 56 of the Council of Ministers concerning scholarships and other forms of material support for Romanian citizens sent to other countries to pursue higher studies or to obtain scientific diplomas, published in *Buletinul Oficial* No. 7, dated 17 February 1970.

Under these regulations, Romanian citizens sent abroad at the expense of the State to pursue higher studies or to obtain scientific diplomas are entitled to the following benefits:

(a) Scholarships in foreign currency while they remain abroad for study;

(b) Annual allowances for the purchase of books and school supplies;

(c) Foreign currency allowances for their support and for the purpose of preparing and presenting their paper for a diploma or their doctoral thesis;

(d) Scholarships in lei while they are in their own country for holidays, practical work, documentary research, medical leave, etc.;

(e) Round-trip travel from their home to the place of study;

(f) Publications issued in Romania;

(g) A one-month vacation, upon completion of their studies;

(h) Medical assistance;

(i) Excursions, and trips for purposes of rest or medical treatment;

(j) Monthly allowances, in lei, for the support of their family or for personal expenses, calculated on the basis of their base salary at recruitment, in the case of persons who have been sent to obtain scientific diplomas.

The decision also provides that the period of study for the purpose of obtaining scientific diplomas abroad is to be counted towards length of service in the specialized field and uninterrupted length of service in the same unit, in the case of citizens who were employed at the time of their departure.

V. Regulations concerning the right freely to participate in the cultural life of the community

(Article 27, paragraph 1, of the Universal Declaration of Human Rights)

Decree No. 338 on the organization and functions of the State Committee for Culture and Art,

published in *Buletinul Oficial* No. 85, dated 17 July 1970.

The new regulations are intended to provide the legal framework necessary for improving the activities of the State Committee for Culture and Art, in order to meet the new conditions brought about by the development of social life in Romania.

The decree contains provisions regarding the powers of the State Committee for Culture and Art, the improvement of the structure and activities of its administrative machinery and of its methods of work, the decentralization of functions and the simplification of administrative operations.

The functions of the State Committee for Culture and Art, as set forth in article 8 of the decree, are, *inter alia*, as follows:

(a) To encourage and support literary and artistic productions imbued with the ideals of socialist humanism, and inspired by the history of the Romanian people, and the contemporary achievements of Socialist Romania; to arrange for the dissemination of works of merit by Romanian authors and by authors of co-inhabiting nationalities; to valorize the national and universal cultural heritage;

(b) To support creative associations and mass and public institutions and organizations engaged in cultural and artistic activities;

(c) To direct and co-ordinate activities connected with the dissemination of science and culture among the masses, with a view to raising the cultural level of the working people; to direct and co-ordinate the activities of cultural establishments;

(d) To direct and co-ordinate publishing activities and the dissemination of printed works;

(e) To organize the production of films;

(f) To co-ordinate and direct artistic institutions dealing with shows and concerts;

(g) To arrange, in accordance with the law, for the registration, protection and popularization of property of cultural, artistic, historic or documentary value;

...

(h) To create suitable conditions for the development and appreciation of popular creative works from all regions of the country;

...

(i) To produce cultural and artistic publications;

(j) To promote international appreciation of Romanian art and culture;

...

(l) To support and encourage literary and artistic creativity and the performing arts by means of contests, festivals, exhibitions, orders, purchases, prizes and scholarships;

...

According to the provisions of article 10, the State Committee for Culture and Art is directed by a Council, a deliberative body composed of:

(a) A president, a first vice-president, vice-president and a secretary-general;

(b) The chairmen of the Writers' Union, the Composers' Union and the Artists' Union;

(c) Delegates from the directorate of the Ministry of Education, the Radio and Television Committee, the Academy of the Socialist Republic of Romania, the Academy of Social and Political Sciences of the Socialist Republic of Romania, the Central Committee of the Communist Youth League and the Central Council of the General Union of Romanian Trade Unions;

(d) Cultural and artistic personalities, chairmen of local committees for culture and art, directors on the staff of the State Committee for Culture and Art, and the chief officers of cultural and artistic organizations or institutions.

According to article 11, delegates from certain State or public organs or organizations interested in examining the problems brought up for discussion may be invited to attend meetings of the Council.

VI. Regulations concerning freedom of conscience and religion

(Article 18 of the Universal Declaration of Human Rights)

Decree No. 334 concerning the organization and operation of the Department of Religious Denominations, published in *Buletinul Oficial* No. 103, dated 15 August 1970.

The powers vested in this central body of the State administration are intended for the implementation of State policies regarding the organization and activities of religious denominations and the exercise of the State's right to supervise them and ensure that they comply with the provisions of the law.

The Department of Religious Denominations is directed by its Board, a deliberative body which takes decisions on general problems relating to the Department's work. The Department is headed by a chairman and a vice-chairman.

The functions of the Department of Religious Denominations, as set forth in article 5, are, *inter alia*, as follows:

(a) To supervise and review all activities of religious denominations, in order to ensure that they are carried out within the framework of the law;

(b) To prepare reports, in accordance with the law, with a view to the recognition of religious denominations and the approval of their statutes;

(c) To make proposals to the Council of Ministers on the creation of dioceses, on the basis of requests by the competent organs of the denominations, and to approve the boundaries of dioceses;

(d) To authorize, in accordance with the law, the establishment of other organizations and components of recognized denominations;

(e) To authorize the establishment of monastic institutions;

(f) To make recommendations, for submission to the Council of Ministers, on the recognition by the State Council of the heads of denominations as well as of the chief officers of dioceses and of persons of comparable status;

(g) To authorize, under the terms of the law, the creation and operation of educational institutions for the training of religious personnel and to approve the appointment of the teaching staff of such institutions;

(h) To ensure compliance with the legal provisions regarding the external relations of religious denominations;

(i) To supervise and verify compliance with the legal provisions regarding registration of the property, income and expenditure of religious denominations;

(j) To settle, in accordance with its powers, any labour and salary problems pertaining to religious denominations, to provide guidelines for the uniform application of the wage system and to verify their implementation;

. . .

(l) To provide for measures, in accordance with the law, to supervise and preserve any monuments and objects of historical or artistic value and the documents or archives belonging to the patrimony of the denominations;

(m) To provide liaison between the religious denominations and the central and local State organs;

(n) To submit to the Council of Ministers proposals for normative acts and for other acts provided for by law; to consider draft normative acts, and other draft legislation with which the department may be concerned, prepared by ministries and other central organs or by executive committees of the district People's Council or that of the People's Council of the municipality of Bucharest.

VII. Regulations aimed at ensuring respect for the rights and freedoms of others

(Article 29 of the Universal Declaration of Human Rights)

Decree No. 342, amending the Air Code, published in *Buletinul Oficial* No. 85, dated 17 July 1970.

This decree makes it a criminal offence to prevent the operating personnel of an aircraft from performing their duties or to take control of or command, directly or indirectly, an aircraft without being entitled to do so.

The commission of this act for the purpose of diverting the aircraft from its flight route constitutes an aggravating circumstance entailing a more severe penalty.

Likewise, the killing of any person with a view to committing the offence of preventing the operation of an aircraft, or any exceptionally serious consequence resulting from the abovementioned acts, such as the death of one or more persons, constitutes an aggravating circumstance entailing the death penalty or 15 to 20 years of imprisonment.

Since such acts present an extremely serious social danger, any attempt to commit them is also punishable. The production or acquisition of means or instruments or the taking of measures with a view to committing the offence of preventing the operation of an aircraft are also considered to be an attempt.

For purposes of prevention, and in order to facilitate the detection of offenders and their arrest, failure to report an offence aimed at preventing the operation of an aircraft is punishable under the conditions and by the penalties stipulated in article 170 of the Penal Code.

In order to ensure a suitable level of competence in the adjudication of such cases, since incidents of this kind may occur in different places and situations, the decree stipulates that this offence, when committed by civilians, shall be tried at only one level of jurisdiction, by the Court of the municipality of Bucharest.

SENEGAL

ACT No. 70-15 OF 26 FEBRUARY 1970 REVISING THE CONSTITUTION[1]

Art. 1. Delete the words "private and collective" between the words "the right to" and "property" in the preamble to the Constitution.

Art. 2. Article 5, the heading of title III, articles 21, 22, 26, 33-39, 43-46, 49, 52, 56, 57, 65, 66, 70-72, 74, 75 *bis*, 80, 88 and 89 of the Constitution are repealed and replaced by the following provisions:

...

"TITLE III

"The President of the Republic and the Government

"*Article 21*

"The President of the Republic shall be elected by direct universal suffrage in two ballots by majority vote.

"He may be re-elected only once."

"*Article 22*

"The term of office of the President shall be five years."

...

"*Article 36*

"The President of the Republic shall be the guardian of the Constitution. He shall determine national policy which the Government shall carry out under the direction of the Prime Minister."

...

"*Article 45*

"A member of the Government may not carry on any public or private professional activity.

"The manner in which this article shall be applied shall be determined by an organic law."

"*Article 46*

"The President of the Republic may, on the proposal of the Prime Minister and after consulting the President of the National Assembly and having obtained an opinion of the Supreme Court, submit a bill to a referendum."

"*Article 49*

"Members of the National Assembly shall be elected by direct universal suffrage. Their term of office shall be five years unless the provisions of the article 75 *bis* are applied.

"The number of members of the National Assembly, their remuneration and conditions governing their eligibility, the system relating to disqualifications and incompatible offices shall be determined by an organic law."

...

"*Article 70*

"Members of the Government may be heard at any time by the National Assembly and by its committees. They may be assisted by government commissioners."

"*Article 71*

"Members of the National Assembly and the President of the Republic shall have the right of amendment. Amendments of the President of the Republic shall be presented by a member of the Government."

...

"*Article 74*

"Members of the National Assembly may put to members of the Government, and the latter must reply, written and oral questions, with or without debate. Questions and the answers given shall not lead to a vote.

[1] *Journal officiel de la République du Sénégal*, special edition, No. 4089, of 28 February 1970. For extracts from the Constitution of Senegal of 7 March 1963, see *Yearbook on Human Rights for 1963*, pp. 256 and 257.

"The National Assembly may appoint its own committees of inquiry.

"The conditions relating to the organization, operation and powers of the committees of inquiries shall be laid down by law."

"*Article 75*

"The National Assembly may bring about the resignation of the Government by adopting a motion of censure.

"The motion, to be admissible, must be signed by one quarter of the membership of the National Assembly.

"The vote on the motion of censure may not take place earlier than two clear days after it has been deposited in the office of the National Assembly.

"The motion shall be adopted in an open ballot, by an absolute majority of members of the National Assembly; only votes in favour of the motion of censure shall be counted.

"If the motion of censure is adopted, the Prime Minister shall immediately submit to the President of the Republic the collective resignation of the Government.

"The outgoing Government shall expedite current business until a new Government is formed.

"If the motion of censure is rejected, the signatories thereof may not propose a new motion in the same session."

"*Article 75* bis

"The President of the Republic may decree the dissolution of the National Assembly after consulting its President when it has adopted a motion of censure against the Government under article 75.

"The dissolution decree shall fix the date of the ballot for the election of members of the National Assembly. The ballot shall take place not less than 45 and not more than 60 days after the date of publication of the said decree.

"The Assembly may not be dissolved again in the year following the date of the definitive announcement of their election.

"Once dissolved the National Assembly may not meet; the term of office of its members shall not, however, expire until the date on which the election of members of the new National Assembly is announced."

"*Article 80*

"The judicial power shall be independent of the legislative and executive powers. It shall be exercised by the Supreme Court and the Courts and Tribunals.

"In the exercise of their functions, judges shall be subject only to the authority of the law.

"Members of the Bench shall be irremovable. They shall be appointed by the President of the Republic on the advice of the *Conseil Supérieur de la Magistrature.*

"The powers, organization and operation of the *Conseil Supérieur de la Magistrature* shall be determined by an organic law."

. . .

"*Article 88*

"The Economic and Social Council shall assist the President of the Republic, the Government and the National Assembly. It shall give an opinion on matters referred to it by the President of the Republic, the Government or the Assembly.

"It shall have the power to examine bills and proposals concerning laws and draft decrees of an economic and social nature, with the exception of finance bills.

"It shall automatically be called upon to render opinions on bills relating to programmes of an economic and social nature and to the national plan.

"It may also be informed of and consulted on any problem affecting the economic and social life of the nation.

"The composition, organization and operation of the Economic and Social Council shall be determined by an organic law."

"*Article 89*

"The initiative for revising the Constitution shall reside equally with the President of the Republic, on the proposal of the Prime Minister, and with members of the National Assembly.

"The bill or proposed revision, if adopted by the National Assembly, shall not come into force until it has been approved by referendum.

"The bill or proposed revision shall not, however, be submitted to a referendum when the President of the Republic decides that it shall only be submitted to the National Assembly; it that case, the bill or proposed revision shall only be approved if it acquires a majority of three fifths of the membership of the National Assembly.

"Articles 53 *bis* and 66 shall not apply to constitutional laws.

"The republican form of Government shall not be made the subject of revision.

. . .

ACT No. 70-31 OF 13 OCTOBER 1970 AMENDING AND SUPPLEMENTING ARTICLES 2, 7 AND 22 OF ACT No. 61-10 OF 7 MARCH 1961 DETERMINING SENEGALESE NATIONALITY[2]

Art. 1. Article 2 of Act No. 61-10 of 7 March 1961 determining Senegalese nationality is hereby supplemented by the following:

"*Art. 2. (2)* The Government may by decree bar the application of the provisions of article 1 to a person who possessed at birth and has retained foreign nationality. Such action must be taken within one year from the day on which the person concerned was issued with a certificate of Senegalese nationality, in which event he is deemed never to have been of Senegalese nationality."

Art. 2. Article 7 of Act No. 61-10 of 7 March 1961 determining Senegalese nationality is hereby rescinded and replaced by the following provisions:

"*Art. 7.* An alien woman who marries a Senegalese national shall acquire Senegalese nationality upon the celebration of the marriage, provided that the Government may by decree bar such acquisition within a period of one year, which shall start on the day established in the seventh paragraph of this article. A marriage contracted by a customary ceremony shall not lead to acquisition of nationality unless it is registered.

"Nevertheless, an alien woman who under her national law may retain her nationality shall have the right, before the celebration of marriage, to decline Senegalese nationality.

"If the marriage is celebrated in Senegal, that right shall be exercised in the presence of the magistrate *(juge de paix)* within whose jurisdiction the marriage is to be celebrated.

"If the marriage is celebrated abroad, the said right shall be exercised in the presence of the Senegalese consular authorities in the country concerned.

"The above-mentioned authorities shall notify the Minister of Justice immediately.

"If the Government bars acquisition of Senegalese nationality, the woman concerned shall be deemed never to have acquired Senegalese nationality.

"The period in which the acquisition of Senegalese nationality may be barred shall not commence until the day on which the woman concerned applies to the Minister of Justice for a document attesting that she has not claimed the right to decline Senegalese nationality."

Art. 3. Article 22 of Act No. 61-10 of 7 March 1961 determining Senegalese nationality is hereby supplemented by the following:

"*Art. 22. (4)* The certificate of Senegalese nationality shall be issued in triplicate: one certificate shall be given to the person concerned, a second shall be sent immediately by the magistrate to the Minister of Justice and the third shall be kept in the archives of the magistrature. A copy may be issued to the person concerned."

Art. 4. The provisions of article 1 of this Act shall not apply to persons who obtained a certificate of Senegalese nationality before the Act came into force.

The provisions of article 2 of this Act with respect to the beginning of the period in which acquisition of Senegalese nationality may be barred shall not apply to women whose marriage was celebrated before the Act came into force.

[2] *Ibid.*, No. 4127 of 19 October 1970.

ACT No. 70-27 OF 27 JUNE 1970 RESCINDING AND REPLACING ARTICLE 21 OF ACT No. 61-10 OF 7 MARCH 1961 DETERMINING SENEGALESE NATIONALITY[3]

Art. 1. Article 21 of Act No. 61-10 of 7 March 1961 determining Senegalese nationality is hereby rescinded and replaced by the following:

"*Art. 21.* During the period of 10 years following the acquisition of Senegalese nationality any person may be deprived thereof if:

"1. He is convicted of an act constituting a crime or offence *(délit)* against the security of the State;

"2. He is convicted in Senegal or abroad of an act constituting a crime or offence carrying a penalty of a term of more than five years' imprisonment;

"3. He has done acts or conducted himself in a manner incompatible with the nationality and detrimental to the interests of Senegal.

"Deprivation of nationality may be extended to the wife and minor children of the person concerned if they are of foreign origin and have retained foreign nationality. It may not, however, be extended to minor children unless it is also extended to the wife.

[3] *Journal officiel de la République du Sénégal*, No. 4112, of 18 July 1970. For extracts from Act No. 61-10, see *Yearbook on Human Rights for 1961*, pp. 295-298.

"Deprivation of nationality shall not apply to the persons referred to in articles 28, 29 and 30.

"Deprivation of nationality shall be pronounced by a decree which shall be published in the *Journal officiel*."

Art. 2. The new grounds for deprivation of nationality enumerated above shall apply also to anyone who acquired Senegalese nationality less than 10 years before the date on which this Act entered into force, but only in respect of acts done after this date.

SIERRA LEONE

THE NON-CITIZENS (TRADE AND BUSINESS) (AMENDMENT) ACT, 1970*

2. Section 2 of the principal Act is hereby amended by re-numbering the existing section as subsection (1) and adding the following new subsection:

"(2) Nothing in this section shall apply to the operation by non-citizens of any Supermarket operated in accordance with a licence granted under section 4".

3. Subsection (1) of section 5 of the principal Act is hereby amended as follows:

(a) By deleting the words "or retail trades" in the fourth and fifth lines thereof;

(b) By replacing paragraph *(c)* thereof by the following new paragraph:

"*(c)* the provision of transport by road or river whether for his own business or otherwise:

Provided that any non-citizen now operating vehicles or vessels in the ordinary course of his own business undertaking may continue to operate the vehicles or vessels operated by him at the commencement of this Act for such period as the Minister may in writing approve after being satisfied in each case that there is no suitable alternative transport operated by citizens;";

(c) By the substitution of a colon for the semi-colon at the end of paragraph *(r)* thereof and the addition immediately thereafter of the following proviso:

"Provided that any non-citizen operating any such distribution at the date of commencement of this Act may continue to do so for a period not exceeding nine months after that date with the written permission of the Minister;"; and

(d) By substituting a full stop for the semi-colon at the end of paragraph *(s)* and deleting paragraph *(t)*.

4. Subsection (4) of section 5 of the principal Act is hereby amended by inserting the word "retail" immediately after the word "any" in the second line thereof.

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* *Supplement to the Sierra Leone Gazette, Extraordinary*, No. 26, of 26 March 1970. For extracts from the Non-Citizens (Trade and Business) Act, 1969, see *Yearbook on Human Rights for 1969*, pp. 238 and 239.

SPAIN

ACT No. 7/1970, OF 4 JULY, AMENDING BOOK I, TITLE VII, CHAPTER V OF THE CIVIL CODE CONCERNING ADOPTION[1]

...

Sole article. Book I, title VII, chapter V, of the Civil Code shall be amended to read as follows:

CHAPTER V

Adoption

Section 1. General provisions

Art. 172. Adoption may be full or simple.

Simple adoption may be converted into full adoption if all the requirements for such conversion are fulfilled.

It is a requirement for adoption that the adopter should be in exercise of all his civil rights and be over 30 years of age. In case of adoption by husband and wife, it shall suffice that one of the adopters has attained the said age. The adopter or one of the adopting spouses must in any event be at least 16 years older than the person adopted.

Acknowledged children born out of wedlock may be adopted by a natural parent even if the requirements as to age set forth in the preceding paragraph are not fulfilled.

The following may not adopt:

1. Persons whose religious orders prohibit them from marrying;

2. A guardian with respect to his ward, until such time as the accounts of the guardianship have been finally approved;

3. Either spouse without the consent of the other, except in the case of the spouse declared to be the innocent party by a decree of separation.

Except in case of adoption by both spouses, no one may be adopted by more than one person at the same time.

Art. 173. The adoption must be approved by the competent judge, with the intervention of the *Ministerio fiscal.*

The following must give their consent to the adoption:

A. The adopter and his spouse;

B. The person to be adopted, if over 14 years of age, and his spouse.

In case of legal separation, the consent of the spouse of the person to be adopted shall not be required;

C. The father and mother, jointly or separately, of the person to be adopted, if the latter is a minor subject to parental authority;

D. The guardian, with the authorization of the family council, if a guardianship has been established.

Only a hearing shall be required to be granted to the person to be adopted if he is under 14 years of age, provided that he is of sufficient discretion, to the father or mother if he or she has been deprived of parental authority of the exercise thereof has been suspended, and to the person who has had custody of the person to be adopted. In the case of orphans, a hearing shall also be granted to the grandparents on the side of the deceased father or mother.

If any of the persons required to give their consent, other than the adopter and the person to be adopted, cannot be summoned or, having been summoned, fails to appear in Court, the judge shall make such order as he deems to be in the best interest of the person to be adopted. The same shall apply in the case of persons required to be granted a hearing, even if they appear in court and object to the adoption.

Even where all the requirements for adoption are fulfilled, the judge shall in every case consider whether, in accordance with the circumstances of the particular case, the adoption is in the interest of the person to be adopted, especially if the adopter has legitimate or legitimated children, acknowledged children born out of wedlock or other adopted children.

Art. 174. In case of the adoption of abandoned minors, the consent of the parents or guardian shall not be required as provided for in the preceding article; however, the foregoing shall be without prejudice to the granting of a hearing to the parents if they are known or if they come forward.

[1] *Boletín Oficial del Estado*, No. 161, of 7 July 1970.

A minor under 14 years of age shall be deemed to be abandoned if he has no one to provide for his care, support and upbringing. For the purpose of determining whether he is abandoned, it shall be immaterial whether his situation was brought about intentionally or unintentionally.

The placement of a minor in a charitable home or institution shall also be deemed to constitute abandonment in the following cases:

(a) Where the minor was placed in the home or institution without any indication of his parentage;

(b) Where, although his parentage is known, the intention of his parents or of the persons having custody of him to abandon the minor is manifest at the time of his placement or is inferrable from subsequent acts.

In either case, it shall be a requirement for a determination of abandonment that there has elapsed after the placement of the minor a continuous period of six months during which no effective concern is manifested by his father, mother, guardian or other relatives through acts demonstrating their willingness to assist him. A mere request for information concerning the minor shall not of itself interrupt the above-mentioned six-month period.

Abandonment shall be determined and declared by the judge who is competent in respect of the adoption proceedings.

Art. 175. After the adoption is approved by the judge, a public instrument *(escriptura pública)* shall be executed and recorded in the appropriate civil registry.

The civil registry shall, as from the date of adoption, publish no information disclosing the origin of the person adopted or indicating that he was adopted. Except as expressly provided in legislation concerning the civil registry, no literal copy of the record may be issued.

Art. 176. Except as otherwise expressly provided by law, an adopted child shall have the same rights and obligations as a legitimate child.

Adoption shall create kinship between the adopter, on the one hand, and the person adopted and his descendants, on the other hand, but not with respect to the family of the adopter; however, the foregoing shall be without prejudice to the legal provisions concerning impediments to marriage.

Adoption shall confer upon the adopter parental authority over an adopted minor. Where either spouse adopts the legitimate or legitimated child, the acknowledged child born out of wedlock or the adopted child of the other spouse, parental authority shall be conferred on both spouses, in the order laid down in article 154, first paragraph.

If the parental authority of the adopter is extinguished, the judge shall provide for custody of the minor in accordance with the provisions of book I, title IX, chapters II and IV. The family council shall be composed of the persons designated by the adoptive father or mother in his or her will or failing that, of five persons of good character, preference being given to friends of the adopters.

Art. 177. Adoption shall be irrevocable.

Neither proof of the legitimate parentage of the adopted person nor acknowledgement of his natural parentage nor legitimation shall affect the adoption.

The following persons may bring a legal action for annulment of the adoption:

1. The adopted person within two years of the date on which he attains his majority or on which his incapacity ceases, provided that the basis for the action constitutes a ground for the disinheritance of ascendants;

2. The legitimate or natural father or mother within two years of the date of adoption, only if he or she did not intervene in the adoption proceedings or give consent and shows proof that failure to do so was due to reasons beyond his or her control;

3. The *Ministerio fiscal,* whenever serious reasons affecting the care of an adopted minor or incapacitated person come to its notice.

Annulment of the adoption shall not affect property previously acquired through inheritance.

Section 2. Full adoption

Art. 178. Only the following may adopt fully: spouses who live together, act jointly and have been married for more than five years; the spouse declared to be the innocent party by a decree of legal separation; widows and widowers; unmarried persons, either spouse with respect to the legitimate or legitimated child, the acknowledged child born out of wedlock or the adopted child of the other spouse, and the father or mother with respect to his or her own acknowledged child born out of wedlock.

Only the following may be adopted fully: persons who are under 14 years of age or who, if over 14 years of age, were living in the home of and in company with the adopters or either one of them before attaining that age; however, even where this condition is not fulfilled, persons over 14 years of age may be adopted fully if they have family or emotional ties to the adopter, which shall be considered by the judge in the manner laid down in article 173.

The person adopted shall, even if his parentage is known, bear only the surname of the adopter or adopters.

An adopted person shall not be liable for any debts on the ground of kinship to his natural ancestors or collaterals.

Art. 179. An adopted child shall have the same status as legitimate children with regard to inheri-

tance from the adopter, subject to the following specific provisions:

1. If all the other heirs under a will are legitimate children, he shall not receive a larger non-statutory bequest than the least-favoured legitimate child;

2. If the other heirs include acknowledged children born out of wedlock, no such child shall receive a smaller portion than the adopted child.

The adopters shall have the status of legitimate parents with regard to inheritance from an adopted child.

Without prejudice to the provisions of article 812 of the Code, natural relatives shall not assert any rights under the law to inherit from an adopted child.

Section 3. Simple adoption

Art. 180. The only requirements for simple adoption shall be those generally provided for in section 1 of this chapter. In the case of the spouse declared to be the innocent party by a decree of legal separation, the provisions of article 178, first paragraph, shall apply.

It may be agreed in the public instrument of adoption that the surname of the person to be adopted shall be replaced by that of the adopter or adopters or that one surname from each source shall be used, in which case the order of the surnames shall be specified. In the absence of an express agreement, the person adopted shall retain his own surname.

An adopted child shall have the same status as acknowledged children born out of wedlock with regard to inheritance from the adopter. The adopter shall have with respect to inheritance from an adopted child a status equivalent to that of a natural parent.

Transitional provision

Adoptions prior to the entry into force of this Act may be brought into conformity with its provisions, provided that the requirements and formalities specified in the Act have been observed; in such a case, the inheritance agreement, if any, may be deemed to be void.

DECREE 2615/1970, OF 12 SEPTEMBER, OF THE MINISTRY OF GOVERNMENT, REGULATING ELECTORAL CAMPAIGNS FOR FAMILY REPRESENTATION COUNCILLORS[2]

Art. 1. Electoral campaign

1. For the purposes of this Decree, "electoral campaign" means all legal activities organized or carried on by candidates nominated for the office of councillor, or their agents, from the time of the nomination until 24 hours before the time set for the commencement of voting, with a view to winning the votes of the electorate of the appropriate district or municipal area.

2. Any person who, in the request for nomination submitted to the Municipal Census Board, does not expressly declare his adherence to the principles of the National Movement and other Fundamental Laws of the Kingdom may not be nominated a candidate and the certificate referred to in paragraph 1 of the following article will not, therefore, be issued to him.

3. The sole purpose of the electoral campaign shall be to make the candidate and his municipal plan of action known to the electorate and it must be conducted in accordance with the provisions of the law in force and with those laid down in this Decree.

4. In the conduct of the campaign, the electoral bodies shall ensure strict compliance with the principle of equality of opportunity for all candidates, who shall promise that the competition between them will always be fair and in strict conformity with established provisions.

Art. 2. Duration

1. The electoral campaign may not commence until the certificate referred to in the last paragraph of article 53 of the Regulations for the Organization, Conduct and Legal Control of Local Corporations has been obtained and nominated candidates have transmitted to the Municipal Census Board the documents referred to in articles 3 and 41 of this Decree.

2. All activities or functions related to the electoral campaign shall cease 24 hours before the time set for the commencement of voting.

Art. 3. Electoral office

Each nominated candidate shall inform the Municipal Census Board, within 24 hours of obtaining his certificate nomination, where his electoral office is installed, even if it is in his own home.

Art. 4. Electoral agent

1. In addition to an auditor *(interventor)* and assignee *(apoderado)*, each candidate may appoint

[2] *Ibid.*, No. 224, of 18 September 1970.

an agent who shall be responsible for the conduct of his electoral campaign. The Municipal Census Board shall be notified of the appointment of the agent and his staff on the day on which the candidates are nominated or on the following day.

2. Any person who has been practising as a lawyer, procurator, chartered administrative manager or publicity agent in the judicial district of the municipality in question for at least three years prior to the date of the notice of elections may be appointed electoral agent but in respect of one candidate only. In municipalities with a population of under 20,000 inhabitants, any other local inhabitant may be appointed electoral agent.

Art. 5. Responsibility of the electoral agent

The electoral agent shall be responsible, jointly with the candidate, for all electoral campaign activities of the candidate he is sponsoring.

Art. 6. Public functions connected with the electoral campaign

1. Without prejudice to the application, in all other respects, of the norms regulating the right of assembly, the authorization of the Municipal Census Board, which shall be transmitted to the administrative authority in good time, shall suffice for the holding of meetings or any public functions connected with the electoral campaign. Such authorization shall always be granted pursuant to the provisions of article 1, paragraph 3, of this Decree.

2. Municipal governments shall make public schools, municipal buildings or other similar municipal premises available to candidates for the holding of public electoral meetings, which shall be of identical length for each candidate, never exceed a total of two hours, and be held on similar days and at similar times and at which only the candidate shall speak.

Art. 7. Printed propaganda

1. Pamphlets, hand-bills and, in general, all printed matter to be circulated on the occasion of the electoral campaign, must receive the prior authorization of the candidate, must conform to the conditions laid down in article 11 of the prevailing Press and Publications Act, and, in addition, must be authorized by the Municipal Census Board.

2. The texts of such propaganda must refer exclusively to his future municipal programme of action and in no case to matters, persons or entities extraneous to the purpose of the election. The texts shall, in every case, express the personal opinion of a single candidate.

3. Placards or posters, which shall display only the photograph of the candidate, his name and surname and the municipality or district he is contesting shall be posted only in places previously determined by the Municipal Census Boards on the proposal of the appropriate municipal government.

4. Pursuant to the rules established by articles 3 and 4 of the Ministry of Government Order of 12 September 1967, printed propaganda may be sent to municipal electors post-free.

Art. 8. Use of communications media

1. Legally nominated candidates shall be able to use, free of charge, within such limits as may be established, only those public or private press and broadcasting facilities as exist in the district and in conditions of complete equality.

2. Candidates' propaganda of the nature referred to in this article, whether free or paid for, shall first be examined and authorized by the Municipal Census Board.

3. The broadcasting of electoral propaganda over the Spanish television networks shall be prohibited. Any information those networks may supply concerning municipal elections shall be of such a nature as not to afford any candidate more favourable treatment than his opponents.

Art. 9. Press information

1. Publications required to do so, shall insert, free of charge, in the alphabetical order of candidates' first surnames, a recent photograph, measuring no more than 6.5 cm. X 9 cm. of each candidate, who must appear alone, together with an account of his career and programme which must not exceed 500 words, the candidate's complete name being included in the calculation.

2. The insertion referred to in the preceding paragraph shall appear in the newspaper on the same day for all candidates, in identical typographical characters and print and on the same page of the newspaper or, if one page is not sufficient, on consecutive pages.

3. For the purposes mentioned above, the candidate shall, at the time of his nomination, ensure that the above-mentioned photograph and text are handed to the Municipal Census Board.

The Board, having verified that the documents comply with the requirements of this article, shall process them and, working through the General Press Department, send them to the publications in question for immediate insertion in the form mentioned above, which shall be done under the provisions of article 6 of the prevailing Press and Publications Act.

Art. 10. Circumstantial unions

1. With a view to better application of the principle of equality of opportunity, any type of circumstantial association or union, express or *de facto*, for electoral purposes, shall be prohibited.

Such associations or unions may be presumed to exist when any of the following circumstances are present:

(a) Two or more candidates use the same office, agent, staff, publicity, organization or economic means;

(b) A campaign specially designed to promote a group of candidates is carried on in the communications media;

(c) Any candidate has drawn attention to them.

2. The intervention of any other union, organization or entity in the conduct of the elections referred to in this Decree shall be prohibited.

Art. 11. Electoral lists

The Municipal Census Boards shall make available for nominated candidates one of the two copies of the duly corrected electoral lists referred to in article 3 of Decree 2237/1965 of 22 July. The candidates may ask as many questions concerning it as they deem necessary. The questions shall be answered by the Board which shall ensure that the requests of all candidates receive equal attention.

If any Municipal Board considers that the proposed number of copies would be inadequate for candidates' needs it may request further copies from the appropriate Provincial Statistical Department, through the Provincial Census Board which, bearing in mind the reasons prevailing in each case, may authorize the dispatch of a maximum of five copies. Two days before the election, the extra copies shall be returned to the Department in question.

Art. 12. Electoral expenses

Each candidate may spend on electoral propaganda an amount which shall not exceed, depending on the population of each municipality or electoral district as shown in the corrected census of the previous 31 December, a sum of one peseta per head for the first 100,000, 0.75 pesetas per head for a population of from 100,001 to 500,000 and 0.50 pesetas for populations in excess of 500,000.

Art. 13. Calculation of electoral expenses

For the purposes of the preceding article, the following shall be deemed to be expenses for electoral propaganda: any sums the candidate spends on the drafting, printing, publishing and circulation of brochures, hand-bills or pamphlets; press and radio publicity announcements and campaigns for which a charge is made and the preparation and exhibition of posters; oral propaganda, use of vehicles and premises, emoluments paid to his appointed auditor *(interventor)*, assignee *(apoderado)* and agent, which may not exceed the daily amount fixed for each election; postage on non-exempt mail; and, in general, any expenses legally incurred in attracting the electorate.

Art. 14. Authorization of electoral expenses

All expenses for the electoral campaign, irrespective of their amount, must be authorized, in writing by the candidate or his electoral agent.

Art. 15. Justification of electoral expenses

1. At least 48 hours before the date fixed for the declaration of elected councillors, candidates must submit a detailed account, with evidence, of expenses incurred to the Municipal Census Board, which shall examine and check them in order to verify that they conform, in nature and quantity to the provisions of this Decree.

2. The agent must give his signed authorization to documents proving that each and all of the expenses shown on the account have been incurred.

Art. 16

1. No matter who incurs them, the following expenses shall be prohibited: those intended for any of the purposes referred to in article 69 of the Electoral Law, those incurred by means of offences or petty offences punishable under the penal law or those which may in any way contribute towards disturbing or altering normal city life or contravening public policy or morality.

2. No matter by whom they are promoted and incurred, the following shall be expressly prohibited: subscriptions, drives, collections, festivals or similar activities designed to raise funds to subsidize electoral propaganda campaigns or to serve as indirect propaganda. Those responsible for such action shall be liable to the penalties laid down in article 20 of Decree 1440/1965 of 20 May.

3. Any expense over and above the sum laid down in article 12, even though incurred in the name of a person other than the candidate, shall also be prohibited.

Art. 17

If the Municipal or Provincial Census Boards perceive reasonable signs of concealment or falsification of the expense account, or if prohibited expenses have been incurred, they shall refer the falsified account to the ordinary penal courts with a view to determining whether the acts committed constitute offences.

Art. 18. Failure to comply with electoral norms

In addition to being subject to the penalties laid down in the prevailing laws, any candidate who

infringes established provisions may not be declared elected; his place shall be taken by the person with the next highest number of votes. The same shall apply if, after being declared elected, such infringements are confirmed by means of a non-appealable judgement.

. . .

ORDER OF THE MINISTRY OF GOVERNMENT OF 23 SEPTEMBER 1970 ESTABLISHING FURTHER REGULATIONS IN PURSUANCE OF DECREE 2615/1970 ON ELECTORAL CAMPAIGNS OF FAMILY REPRESENTATION COUNCILLORS[3]

Art. 1. Any action aimed directly or indirectly at obtaining the votes of the electorate of the corresponding municipal district or area shall be in accordance with the provisions of Decree 2615/1970 of 12 September regulating electoral campaigns and with the provisions of this Order.

Art. 2. Candidates must, in the written request for nomination submitted to the Municipal Census Board, indicate their adherence to the principles of the National Movement as established in article 1.2 of Decree 2615/1970.

Art. 3. 1. As representative of the Government in his province, the Civil Governor, within the scope of his competence and without prejudice to the powers attributed to the Census Boards under the electoral laws, shall:

(a) Ensure that the electoral campaign is conducted in accordance with the pertinent regulations, preventing, when necessary, candidates from engaging in any electoral propaganda activities before or after the period legally established for that purpose;

(b) Ensure in particular that the principle of equality of opportunity among candidates is respected;

(c) Ensure that, in the exercise of their rights, candidates comply with regulations and make use of their freedom of expression within the limits laid down in the pertinent Decree and in accordance with the purpose of the electoral campaign; and propose to Municipal Census Boards any necessary measures to this end;

(d) Make available to Municipal Census Boards the staff and equipment necessary for the proper fulfilment of their task;

(e) Ensure that local government offices are as scrupulous as possible in carrying out their duties in respect of the allocation of premises for public functions and of spaces for the display of posters;

(f) Exercise, without exception, the powers attributed to him by the prevailing laws.

. . .

Art. 6. 1. Meetings or any public electoral propaganda functions shall be held in accordance with the following rules:

(1) Candidates shall request the appropriate authorization from the Municipal Census Board at least three days before the day on which the meeting or public function is to take place, specifying in the request the date and time it is to be held. A request shall also be made for allocation of the selected premises and it shall be accompanied by a succinct but adequate summary of the opinions, arguments or proposals the candidate concerned wishes to bring to the attention of the electors.

(2) As soon as it has ascertained that the request complies with the law, the Municipal Census Board shall dispatch the written authorization at least 24 hours before the time fixed for the holding of the meeting, giving notice of its consent on the same day and by the swiftest means possible to the Civil Governor of the province.

(3) The candidates or their agents may not announce the holding of meetings or authorized public electoral propaganda functions until the appropriate authorization has been obtained.

(4) The Civil Governor of the province may appoint delegates, representing his authority, to attend authorized meetings or public electoral propaganda functions. The actions of such delegates shall conform to the provisions in force with respect to the right of association.

(5) Civil governors shall adopt precise measures to safeguard public order during authorized meetings or authorized public electoral propaganda functions, making use of the powers available to them under the pertinent regulations.

2. Electoral propaganda meetings or public functions shall be strictly confined to the premises designated in each case for that purpose. No type of electoral propaganda shall be allowed in entertainment halls while the entertainment is in progress or during the intermissions.

. . .

Art. 10. 1. Articles 8 and 9 of Decree 2615/1970, which refer to electoral propaganda, both free and paid for, in the press, shall be applicable only to periodicals of general information.

2. Only daily publications of such a nature shall be obliged to make the free insertions referred to in the above-mentioned provisions.

[3] *Ibid.*, No. 231, of 26 September 1970.

Art. 11. 1. For the purposes of article 8.1 of Decree 2615/1970, a radio station shall be understood to be situated in the municipal district explicitly referred to in the authorization or title under which the public broadcasting service is operated. Radio stations of the Spanish National Radio *(Radio Nacional de España)* shall be considered to be situated in the district in which their studios are located.

2. The free radio address shall consist in the reading of a text of no more than 500 words, checked and authorized in the same way as the press insertion referred to in article 9 of Decree 2615/1970. Free radio broadcasts must be transmitted at identical listening times in the alphabetical order of the first surnames of the candidates and, if possible, in succession on the same day or on the day immediately following.

3. Any information supplied by public or private broadcast stations concerning municipal elections shall be supplied in such a way as not to discriminate in favour of or against any candidate.

4. Station directors shall be responsible for ensuring that electoral propaganda broadcasts are made in the terms authorized by the appropriate Municipal Census Board.

Art. 12. Candidates' statements, both free and paid for, disseminated by the press or radio services, shall first be examined and authorized by the Municipal Census Boards which shall act on behalf of the General Directorates of those services.

...

Art. 15. 1. In order to ensure the strictest possible observance of the principle of equality of opportunity between the candidates, and in accordance with article 13 of Decree 2615/1970, all texts or illustrations, other than those provided for in article 9.1 of that Decree, disseminated by the communications media during the period of the electoral campaign and supporting or favouring a candidate or his programme of action, shall be included in the calculation of electoral expenses.

2. The same rule shall apply to texts or information other than the free radio broadcast referred to in article 11.2 of this Order, which are disseminated through radio stations during the same period and which also support or favour a given candidate or his programme of action.

3. Calculation of expenses on the basis of the two foregoing paragraphs shall be effected by applying the publicity tariffs in force in the medium in question prior to the commencement of the electoral campaign for each specific publication, station and space in question.

Art. 16. When the civil Governor considers that the rules governing electoral campaigns have been violated, he shall, besides penalizing those acts which fall within his sphere of competence, immediately bring them to the attention of the appropriate Municipal Census Board, so that it may adopt pertinent decisions with a view to strict application of the provisions of the Decree.

...

ORDER OF THE MINISTRY OF INFORMATION AND TOURISM OF 30 OCTOBER 1970 ESTABLISHING REGULATIONS TO BE OBSERVED BY THE DAILY PRESS IN ELECTORAL PROPAGANDA CAMPAIGNS OF FAMILY REPRESENTATION COUNCILLORS[4]

Art. 1. Daily publications shall insert the free propaganda referred to in article 9 of Decree 2615/1970 of 12 September, with the flexibility necessary to meet the usual technical needs of the publication, without prejudicing the right of declared candidates to equal treatment in official propaganda.

Art. 2. Any candidate who considers he has been unjustly harmed, in respect of another candidate or candidates, by reason of the form in which the above-mentioned insertion is made, shall bring the matter to the attention of the Municipal Census Board, as soon as possible, by means of a written statement setting out the reasons for his complaint.

Art. 3. In cases such as that referred to in the preceding article, the Municipal Census Board, having heard the editor of the newspaper and acting on the technical advice of the appropriate Provincial Department of the Ministry of Information and Tourism, shall determine whether the publication in question has respected the principle of equality of opportunity for all declared candidates.

Art. 4. If the principle has been respected, the Municipal Census Board shall so inform the candidate or candidates concerned and take no further action.

If not, the Municipal Board shall exercise its right to rectify the situation and require the publication in question to make a further insertion of data relating to the aggrieved candidate or candidates in the form and conditions adopted for the favoured candidate or candidates.

Art. 5. In accordance with the provisions of article 38 of the Press and Publication Act and article 9 of the Publicity Statute, the texts of the candidates' electoral propaganda, both free and paid for, shall be clearly identified as advertisements.

[4] *Ibid.*, No. 265 of 5 November 1970.

Art. 6. Pursuant to article 15 of the Ministerial Order of 23 September 1970, on the calculation of electoral expenses, nominated candidates, without prejudice to any legal action they deem appropriate, are entitled to request the editor of any publication to refrain from inserting texts or illustrations in favour of his candidature or programme.

DECREE No. 2310 OF 20 AUGUST 1970, TO ISSUE NEW REGULATIONS CONCERNING THE LABOUR RIGHTS OF WOMEN UNDER ACT No. 56 OF 22 JULY 1961[5]

1. (1) Women shall be entitled to work in employment in full equality with men for all legal purposes, and to receive the same remuneration as men.

(2) It is unlawful for any labour regulations, orders respecting labour matters, collective industrial agreements made with trade unions, compulsory rules (under collective agreements) or works rules to contain any stipulations or clauses implying any difference between workers on the grounds of sex, as regards occupational categories, conditions of work and remuneration.

(3) All regulations respecting apprenticeship, entry into employment, probation periods, job classification, promotion, pay for special work, bonuses, wage supplements and ex gratia payments shall respect the principle of equality of the sexes.

(4) Any arrangement, agreement or stipulation of a contract of employment which infringes the provisions of this section shall be null and void.

2. (1) Women, having equal rights with men, may enter into any type of contract of employment, participate in the negotiation of collective industrial agreements and exercise all the labour and trade union rights provided for by legislation and arising out of collective agreements, all the above without prejudice to the provisions contained herein with respect to special circumstances.

(2) The following persons shall have the right to take up employment:

(a) Single women over 18 years of age, irrespective whether they live with their parents or not;

(b) Single girls over 14 but under 18 living away from their parents, grandparents or legal guardian, with their consent;

(c) All other single girls under 18 years of age, with the authorization of their father, mother, grandfather, or grandmother, legal guardian, the persons or institution having accepted them as wards, or the local authority, in that order.

(3) Married women may take up employment with the authorization of their husband; such authorization shall be presumed to have been given if she is already in employment. The husband's opposition or refusal may be invalidated by a declaration of a judge or other judicial authority to the effect that it was made in bad faith or in abuse of his rights.

In the case of *de jure* or *de facto* separation of the spouses, the authorization to enter into contracts of employment with all the legal effects resulting therefrom shall be deemed to be conceded by law.

A married woman shall not require authorization or assistance of her husband in order to sue or to be sued or to appear in labour law procedures and actions: Provided that she may, if she so wishes, be assisted or represented by her husband.

3. (1) A change in a woman's marital status shall not affect in any way her employment relationship: Provided that she may opt for any of the following courses on her marriage:

1. To continue her employment in the undertaking;
2. To terminate unilaterally her contract of employment, with entitlement to such leaving or separation pay, etc. as may be provided for in the statutory provisions or agreements governing her occupational activity.

   In the absence of any express rule, the above leaving or separation pay shall be equivalent to at least one month's remuneration for each year's service in the undertaking, including periods of intermittent or provisional employment, if any; the full payment shall not exceed six months' wages. The amount of the payment shall be calculated in accordance with the scheduled contribution base for the social security scheme applicable in the occupational category in which the woman is employed;
3. To take voluntary unpaid leave for a period of not less than one year or not more than three years. If the woman opts for this unpaid leave she shall not be entitled during the five years following her reinstatement in the undertaking to the benefit provided for in section 5 of this Decree.

(2) Where a married woman moves with her husband to another district on account of the latter's transfer she shall have a preferential right to employment in an equal or similar occupational category to that which she previously held, if the undertaking has a work centre in the locality where the husband and wife set up their new home.

[5] *Boletín Oficial del Estado*, No. 202, of 24 August 1970; errata: *ibid.*, No. 229, of 24 September 1970. A translation into English of the Decree has been published by the International Labour Office in *Legislative Series* 1970 – Sp.2.

4. (1) Every woman worker shall be entitled on her maternity to the optional and compulsory maternity leave periods, and to receive the corresponding pay and allowances, subject to the conditions laid down in the Act to define the basic principles of social security and the statutory instruments thereunder.

(2) An employed woman who already has several children and is entitled to maternity pay and allowances may apply for such pay and allowances to be increased to 100 per cent of the basic contribution wage (the cost of the difference to be defrayed by the National Labour Protection Fund) in accordance with the rules laid down for these purposes and the provisions laid down in the annual investment plans of the said Fund.

5. (1) On her confinement an employed woman shall be entitled to voluntary additional leave of absence for a period of at least one year or not more than three years as from the date of expiry of the compulsory maternity leave period to devote herself in person to the early upbringing and training of her children, such leave being without pay. Every successive childbirth shall give entitlement to another such period of unpaid leave of absence; if the above occurs while the woman is absent on such unpaid leave the current period of unpaid leave of absence shall be deemed to have terminated when the new period commences. For this purpose the employed woman shall inform the undertaking of her wish to claim such additional leave of absence for the purpose of computing the new period which is commencing.

(2) Any woman absent on the additional unpaid leave of absence referred to in the preceding subsection may at any time apply to the undertaking for her reinstatement, and the undertaking shall be obliged to appoint her to the first vacancy which occurs in the same or a similar category.

(3) The period of additional unpaid leave of absence referred to in subsection (1) above shall in no way affect the benefits in cash and in kind provided by the social security scheme to which the woman worker may be entitled if the woman opts to return to work, paying in full the contribution corresponding to her employment.

(4) If the woman continues to be active in her employment she shall be entitled during the period of lactation to nursing breaks totalling one hour in the course of each working day, divisible into two periods of 30 minutes.

(5) Undertakings which employ 100 or more women workers on a permanent basis shall be obliged, where necessary, to provide suitable premises for the feeding of infants.

6. In conformity with the directives and provisions of the economic and social development plans and the statutory provisions in force respecting education, day nurseries or crèches or kindergartens and nursery schools shall be established and maintained either depending upon the State or run by other institutions, corporations, undertakings or private individuals, to remain open during the hours of work of mothers or other persons responsible for the maintenance or upbringing of children under 6 years of age. The planning and co-ordination of the activities of the above and the scheme of state assistance for them shall be prescribed by regulations according as the Ministry of Labour co-ordinates its activities of promotion and encouragement with the direct action of other ministerial departments competent in this field.

7. (1) The government services shall adopt the necessary measures for the implementation of the principles of equality of opportunity in the field of vocational training and advanced training for promotion, industrial proficiency schemes, etc. for women workers at all levels.

(2) Discrimination on the grounds of sex shall be illegal as regards admission to vocational training courses, irrespective of the economic activity or occupation for which such courses are given, subject to the exception laid down in the subsection provided for in the next following section. Women workers who have opted for the leave referred to in section 5 (1) of this Decree shall have a priority right to attend adult vocational rehabilitation courses.

8. Only dangerous, hazardous, unhealthy or especially arduous work referred to in international conventions and the specific legislation on the subject shall be made inaccessible to women by regulations.

...

SUDAN

THE ARABIC AND ISLAMIC STUDIES COLLEGE ACT, 1970

ACT No. 13 OF 1970[1]

...

4. There shall be established according to this Act, a College to be called "The Arabic and Islamic Studies College", under the supervision of the Minister and its place shall be at Omdurman.

5. The College shall qualify specialists in Islamic and Arabic Studies, encourage studies and researches in these subjects, propagate the study of the Arabic Language and the Arab Civilization and incarnate Islamic faith and revive Islamic culture.

6. The Arabic Language shall be the language of instructions in all principal subjects.

...

[1] *Legislative Supplement to the Democratic Republic of the Sudan Gazette*, No. 1095, of 15 March 1970.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 1970

ACT No. 33 OF 1970[2]

...

2. The Code of Criminal Procedure shall be amended as follows:

(1) *Sections* 9 (2), 11 (2), 14 (2) (i), 17, 22 (ii), 23 (2) in so far as it relates to a minor court, 250, and 262 A shall be omitted, and any reference to any such section in other sections of the Code shall be also omitted;

(2) For sections 8, 251, 252, 253, 256 (1) in so far as it relates to the portion beginning with "The Chief Justice or the Governor" and ending with "that is to say", 257 (1), (2), (2 A) and (3), and 259, in so far as it relates to the portion beginning with "A sentence other" and ending with "provided that" 260, 261 and 263, the following shall respectively be substituted, namely:

"Classes of Criminal Courts

"*(a) Section* 8 – There shall be five classes of Criminal Courts in the Sudan, namely:

"*(a)* Major Courts;

"*(b)* Courts of Magistrates of the First Class;

"*(c)* Courts of Magistrates of the Second Class;

"*(d)* Courts of Magistrates of the Third Class;

"*(e)* Benches of Magistrates."

"Submission for confirmation of certain judgements of major courts – Confirming Authority

"*(b) Section* 251 – Every judgement of a major court whereby a sentence of death or life imprisonment is passed shall be submitted to the Chief Justice for confirmation."

"Right of convicted person to Appeal from the judgement of a Major Court

"*(c) Section* 252 – Every person convicted by a Major Court may appeal from the judgement of such Court to the Chief Justice. The appeal shall be by way of petition in writing containing the reasons of appeal against the judgement or the order made by such court under section 80."

[2] *Ibid.*, No. 1104, of 15 May 1970.

"Presentation of the Appeal and Appellate Authority

"*(d) Section* 253 (1) – An appeal by petition in writing shall lie to the Judge of the High Court or the Province Judge, as the case may be:

"*(a)* By the convicted person from every judgement of the Court of a Magistrate of the first class or of the second class whereby a sentence is passed in excess of the penalties which such magistrates are empowered to award under section 18 or 19 when trying offences summarily;

"*(b)* By the convicted person from every judgement of a bench of Magistrates whereby a sentence is passed in excess of the penalities which a Magistrate of the second class is empowered to award when trying offences non-summarily;

"*(c)* By the person against whom the order is made from every order made by a Magistrate of the first class or of the second class or a Bench of Magistrates under section 80 or 86 or 92 D or 299 and from every order made absolute under section 102 or 103.

"(2) An appeal by petition in writing shall lie to the Magistrate of the First Class by the convicted person from every judgement of a Bench of Magistrates whereby a sentence not in excess of the penalties which a Magistrate of the second class is empowered to award when trying offences non-summarily is passed."

...

"Sentences to take effect notwithstanding appeal

"*(g) Section 259* – A sentence other than a sentence of death shall take effect notwithstanding an appeal provided that: ..."

"The accused etc. not to be heard when the record of proceedings is submitted

"*(h) Section 260* – When the record of any proceeding in a criminal Court is before the Chief Justice for confirmation or before the Chief Justice or the Judge of the High Court or the Province Judge or the Magistrate of the First Class on appeal or revision, neither the accused nor the complaint nor the prosecutor shall be entitled to be heard either in person or by agent."

"Noninterference with finding or sentence

"*(i) Section 261* – The Chief Justice in the exercise of his appellate or confirming jurisdiction and the Judge of the High Court or the Province Judge or the Magistrate of the First Class in the exercise of his appellate jurisdiction shall not interfere with the finding or sentence or other of the Court on the ground only that evidence has been wrongly admitted or that there has been a technical irregularity in procedure, if he is satisified that the accused has not been prejudiced in his defence and that the finding and sentence or order are correct."

"Magistrate not to hear appeals from his own judgement

"*(j) Section 263* – When a magistrate is appointed to act as a Judge of the High Court or the Province Judge and an appeal from a finding, sentence or order passed by him is submitted before him, the Chief Justice shall be the appellate authority."

...

SWEDEN

NOTE*

1. By an Act of 27 May 1970, certain changes were made in the Penal Code, aiming at further safeguarding against discrimination. These changes will enable Sweden to adhere to the International Convention on the Elimination of All Forms of Racial Discrimination.

The Penal Code already contained provisions on *agitation against ethnic groups*. These provisions have now been altered with a view to making it a criminal offence, publicly or by any other means of communication intended for the public, to threaten or insult an ethnic group because of its race, colour, national or ethnic origin or religious creed. In this connexion a new paragraph has been inserted into the Freedom of the Press Act to the effect that it shall constitute a press libel to make printed statements of this kind.

2. In the Penal Code there have further been inserted new provisions concerning a new criminal offence, the so-called unlawful *discrimination*. These provisions apply primarily to businessmen who discriminate against somebody because of his race, colour, national or ethnic origin or religious creed in their business by not giving him the same service as they would give their other customers according to ordinary business conditions.

The same provisions can also be applied to similar actions by arrangers of public gatherings or public meetings.

3. By another Act of 5 June 1970, certain further changes concerning freedom of speech have been made in the Penal Code. In connexion with pornographic material the thus changed provisions stipulate that legal action can no longer be taken merely on the account of the pornographic contents of the material. The principle guiding the new provisions has been to let anyone who wants to acquaint himself with pornographic material be legally free to do so. On the other hand should those who do not wish to have anything to do with pornographic material be protected from having such material imposed upon them? The provisions in the Penal Code concerning *offending morality* and decency have therefore been abolished and replaced by provisions prohibiting public display of pornographic pictures and similar products. Making such display a criminal offence requires that the display is made in such a way as to cause public offence. At the same time the new provisions prohibit delivering – by mail or by any other means of communication – pornographic material to anyone who has not explicitly ordered such material. This new offence is called "unlawful handling of pornographic material". A corresponding provision has been inserted into the Freedom of the Press Act.

4. The group of criminal offences connected with the freedom of speech – such offences have been current *inter alia* in connexion with demonstrations – has been limited. Thus petty attempts to *incite rebellion* have become exempt from punishment. The preparatory material shows *inter alia* that certain instigations to refuse military service shall no longer be punishable; i.e., such cases where the incitement to unlawful actions must be regarded as a link in the creation of public opinion.

5. In September 1970 a special Royal Commission – the so-called Integrity Protection Commission – proposed new legal provisions intended to make it punishable to obtain, or to record, by means of technical devices, any sounds emerging from a person's domicile. The same provision is proposed to apply to listening in and recording in offices, factories, other buildings, or aboard ships, in warehouses and other similar places. The Commission also proposes that the mere application of such devices shall be considered a criminal offence.

6. A further increase in the national basic pensions became effective in 1970. The annual pension – apart from municipal rent allowances – as from January 1971, Sw. Kr. 6,144 for a single pensioner or a total of Sw. Kr. 9,728 for two spouses entitled to a pension.

7. As a result of a reform of the early retirement pension elderly wage-earners, having physically or psychically stressing work, were provided better possibilities or premature pension from 1 July 1970. More lenient rules for early retirement pension were introduced at the same time for handicapped persons lacking the possibility to make practical use of their capacity for work and also for handicapped housewives.

8. For the purpose of carrying out a continued survey of the pension system, the Government appointed a committee, the Committee on Retirement Age, in May 1970, which shall study the

* Note furnished by the Government of Sweden.

question of a general lowering of the pensionable age as well as the question of a more flexible pensionable age. Also the problems which are related to the question of a constant adjustment of pensions to the standard of living in the national basic pensions shall be studied by this committee.

9. In April 1970, the Government appointed a committee of experts to inquire closely into how a dental care insurance should be arranged. The purpose of a dental care insurance should be to make good dental care, at a reasonable cost, accessible to all citizens.

10. According to a decision by the *Riksdag* in 1970, equality between men and women has been introduced in the national health insurance. From 1 January 1970, the so-called "housewife's insurance" has been extended to become a "spouse insurance" which includes both men and women working in the home. Simultaneously, the rules for child supplement allowance from the national health insurance has been made equal for men and women. A non-earning spouse working at home is exempted from paying contributions to the national health insurance.

11. By a decision of the *Riksdag* in 1970, the children's allowance has been raised from 1 January 1971, by Sw. Kr. 300 to Sw. Kr. 1,200 per annum and child.

12. The support of the society to the handicapped is being continuously intensified. In November 1970, the Handicap Committee, appointed by the Government, published its report "Better Social Services for the Handicapped". According to the proposal of the Committee every local district shall establish an efficient transport service, which shall be available to all persons with reduced locomotive power. Moreover, the Committee proposes that every local district shall have a Handicap Council for co-ordinating the activities of the Government, the local authorities and the Handicap Movement.

13. As a result of amendments in the National Health Insurance Act, which came into force on 1 January 1971, better possibilities have been created for a closer integration between the medical care of in-patients and out-patients.

14. In February 1970, a Royal Commission was appointed to which was entrusted the task of making a thorough survey of the legislation concerning industrial safety. The survey is aiming at a new legislation which corresponds to a wider protection of workers. The new legislation is to provide a satisfactory base for widened efforts against dangerous environments. A basic thought is that the physical and mental health of the workers shall be protected at every stage of the production.

15. At the same time as a revision of the legislation concerning industrial safety is going on, the resources of the industrial safety organizations are being, strongthened. The possibilities of the Industrial Safety Inspectorate and the National Board of Industrial Safety to actively intervene at the working places have been considerably extended. In order to intensify the measure against, for instance, dangerous air pollution, increased rights to make controls have been introduced.

The Industrial Safety Service will also be provided with increased resources for research, training and information about industrial safety and working environment questions by the establishment of a special industrial safety fund which will receive Sw. Kr. 20 million annually from contributions by employers.

16. The Government has, in April 1970, distributed a new publication – the so-called Social Catalogue – to every household in the country. The intention is to promote the information about the individual's rights under the social security scheme.

SWITZERLAND

CONSTITUTIONAL PROVISIONS ADOPTED, LEGISLATION ENACTED AND ORDERS OF THE FEDERAL TRIBUNAL ISSUED IN 1970 CONCERNING HUMAN RIGHTS*

A. Federal Law

LEGISLATION

1. *Protection of life and health*

Federal Act of 18 December 1968 amending the Act concerning narcotic drugs.

2. *Social welfare*

Federal Act of 10 October 1969 to amend the Act regulating the payment of family allowances to agricultural workers and small farmers.

Federal Act of 24 June 1970 to amend the Code of Obligations (restriction upon the right to terminate leases).

Federal Council Order of 16 March 1970 amending the ordinance on occupational accident insurance and the prevention of accidents in agriculture.

B. Cantonal Law

I. CONSTITUTIONAL PROVISIONS

Article 88 (revised) of the Constitution of the canton of Valais, giving women equal political rights with men in cantonal and commune matters.

Articles 13 and 14 (revised) of the Constitution of the canton of Vaud (Catholic Statute). In the fifth paragraph of article 13 (revised), the right to practise the Catholic faith is extended to the entire canton. Article 14 (revised) lays down general principles for the participation of the State and communes in expenditures relating to the practice of the Catholic faith in the canton.

Article 131 (revised) of the Constitution of the canton of Geneva, providing the constitutional basis for establishing an administrative tribunal for the purpose of safeguarding the rights of individuals more effectively.

Article 26 bis (new) of the Constitution of the canton of Glarus, introducing voting by secret ballot for the election of the Council of State and of deputies to the Council of States.

Article 16 (revised) of the Constitution of the canton of Zurich, giving women equal political rights with men in cantonal, district and commune matters.

II. LEGISLATION

1. *Protection of life and health*

Act of the canton of Appenzell of 27 April 1969 concerning the catering trade and retail trade in alcoholic beverages in the canton of Appenzell Ausser-Rhoden (Licensing Act).

Buildings Act of the canton of Schwyz, dated 30 April 1970.

2. *Social welfare*

Act of the canton of Valais of 14 November 1969 amending the Act of 20 May 1949 on family allowances for wage-earners.

Order of the Executive Council of the canton of Berne, dated 5 December 1969, concerning increased daily and other allowances payable in connexion with the administration of justice and the courts.

3. *Measures relating to education and culture*

Order of the Chief Cantonal Magistrate and the Council of State of the canton of St. Gallen, dated 10 September 1970, concerning vocational secondary schools.

Regulation promulgated by the Council of State of the canton of Geneva on 8 September 1970 concerning subsidies for private vocational training schools.

4. *Rest and leisure*

Ordinance of the Chief Cantonal Magistrate and the Council of State of the canton of St. Gallen,

* Collected by the Justice Division of the Federal Department of Justice and Police.

dated 7 July 1970, concerning working hours and overtime of the administrative staff of the St. Gallen armoury and barracks.

Order of the Council of State of the canton of Valais, dated 24 December 1969, concerning the weekly closing of hairdressing establishments.

Ordinance of the Board of Education of the canton of Schaffhausen, dated 29 January 1970, concerning the designation of school holidays.

C. Orders of the Federal Tribunal of Switzerland

1. *Freedom of commerce and industry*

Federal Tribunal Order 96 I 138

Cantonal ordinance concerning chiropractors; admissible. Articles 4 and 31 of the Constitution; separation of powers.

The requirement that chiropractors exercising their profession in the canton of Berne at the time the new ordinance was enacted must sit a basically practical examination is consistent with the aforementioned provisions of the Constitution.

Federal Tribunal Order 96 I 204

Articles 4 and 31 of the Constitution. Exercise of the trade of chimney-sweep.

The State chimney-sweeping monopoly established in Fribourg is a legal monopoly under police jurisdiction (items 1 and 2).

Grounds for the withdrawal of licences (item 3).

2. *Social welfare*

Federal Tribunal Order 96 I 364

Articles 4 and 31 of the Constitution. The pharmaceutical profession.

1. The cantonal police regulations ordering shops to close at a specified time during the week so that the shop-workers have the free time they require are intended to safeguard public health and are therefore consistent, in principle, with article 31 of the Constitution (item 2).

3. *Legal protection*

Federal Tribunal Order 96 I 19

Article 4 of the Constitution. Right to be heard in criminal proceedings. It follows directly from article 4 of the Constitution that a party to the action has the right to take cognizance of the preliminary investigation and to draw his own conclusions from it.

Federal Tribunal Order 96 I 321

Articles 4 and 58 of the Constitution. Cantonal procedure. Members of the tribunal. Right to be heard.

Applications based on article 4 of the Constitution, which guarantees the right to be heard. The right to be heard in oral proceedings, which derives directly from article 4 of the Constitution, presupposes that the judges who participate in a decision have all taken part in the hearings for presentation of evidence.

4. *Guarantee of ownership*

Federal Tribunal Order 96 I 39

Arbitrary reorganization of parcels of land. Extent of the Federal Tribunal's authority to review.

In principle when parcels are reallotted, they must be intact also in respect of their area. This is only a general rule, however, and is to be applied only when technical difficulties do not stand in the way. Article 4 of the Constitution is not violated when a landowner is for good and valid cause, assigned a considerably smaller parcel of land.

Federal Tribunal Order 96 I 123

Compensation for expropriated property. Concept of the expropriation of property. Its application when the legislative body itself imposes restrictions on the ownership of property under public law. In any event, there is no obligation to pay compensation at the public expense where the restrictions are exclusively or primarily designed to avoid specific dangers to public safety or to the lawful property of individuals. The law prescribing that buildings may not be erected less than 20 metres from the edge of a forest is such a restriction, as is the decision not to waive this restriction in the case of a parcel of land on a steep incline.

Federal Tribunal Order 96 I 557

Guarantee of ownership.

... A restriction upon ownership of property such as that imposed in a cantonal Act relating to forests, which prohibits the construction of buildings at a distance of less than 20 metres from a forest can be upheld on the ground that it is sufficiently in the public interest (confirmation of decision).

5. *Freedom of assembly and speech*

Federal Tribunal Order 96 I 219

Conviction for participation in an unauthorized demonstration.

1. The freedom of assembly and speech are guaranteed in the unwritten constitutional law of the Confederation.

Is the freedom to demonstrate likewise guaranteed? (item 4).

2. Interpretation and legal basis of the provision made by the Zurich Town Council (executive), under which meetings and parades on public land may not be organized unless police permission is obtained (item 6).

3. This provision is consistent with the unwritten constitutional law of the Confederation and with the so-called principle of "proportionality" (item 7).

Federal Tribunal Order 96 I 586

Article 55 of the Constitution. Freedom of the Press; freedom of speech.

1. Written material in furtherance of an ideal which is reproduced in several hundred copies constitutes "printed matter" and, as such, is covered by the freedom of the Press (item 3).

2. The requirement to obtain permission prior to circulating free copies of such printed matter to the public is a violation of the freedom of the Press (article 55 of the Constitution) which excludes prior censorship (item 4). It is also a violation of the freedom of speech under the unwritten constitutional law of the Confederation (item 6).

THAILAND

NOTE*

1. *Act Establishing the Changwat Chiang Mai Children and Juvenile Court, B.E. 2513 (1970)*

This Act establishes a Children and Juvenile Court in Changwat Chiang Mai with the jurisdiction over Changwat Chiang Mai in order to implement section 7 of the Act Establishing Children and Juvenile Courts, B.E. 2494 (1951) which requires the establishment of such a court to be made by an Act.

2. *Royal Decree Fixing the Date of the Opening for the Administration of Justice of the Changwat Chiang Mai Children and Juvenile Court, B.E. 2513 (1970)*

This Royal Decree fixes 21 August B.E. 2513 (1970) as the date for the opening for the administration of justice of the Changwat Chiang Mai Children and Juvenile Court in order to give effect to the Act Establishing the Changwat Chiang Mai Children and Juvenile Court, B.E. 2513 (1970).

3. *Royal Decree Establishing the Changwat Chiang Mai Children Welfare and Protection Centre, B.E. 2513 (1970)*

This Royal Decree establishes a Children Welfare and Protection Centre in Changwat Chiang Mai with the jurisdiction over Changwat Chiang Mai following the establishment of the Changwat Chiang Mai Children and Juvenile Court by the Act so establishing the Court, B.E. 2513 (1970), in order to implement section 7 of the Children and Juvenile Court Procedure Act, B.E. 2494 (1951) as amended by the Children and Juvenile Court Procedure Act (No. 2), B.E. 2506 (1963) which requires such establishment to be made by a Royal Decree.

* Note furnished by the Government of Thailand.

TOGO

ORDINANCE No. 18 OF 12 SEPTEMBER 1970 ESTABLISHING AND ORGANIZING A STATE SECURITY COURT AND REGULATING ITS PROCEDURE*

The President of the Republic,

Having regard to Ordinance No. 1 of 14 January 1967, and to Ordinances Nos. 15 and 16 of 14 April 1967,

The Council of Ministers being in agreement,

...

TITLE I

Organization

Art. 1. A State Security Court is hereby established with jurisdiction in cases involving serious offences *(crimes)* and correctional offences *(délits)* against the security of the State and related offences.

...

TITLE II

Procedure

Art. 9 The existence of an offence against State security shall be established by officers of the *gendarmerie* in their capacity as officers of the criminal police, who are authorized to do all necessary acts as provided in article 10 of the Code of Criminal Procedure. They shall inform the Keeper of the Seals, Minister of Justice, to whom they shall submit written reports of their operations immediately upon completion of their investigations.

Art. 10. In cases involving serious offences *(crimes)* and correctional offences *(délits)* within the jurisdiction of the State Security Court, proceedings shall be instituted and a preliminary investigation conducted in accordance with the rules of ordinary law as set forth in the Code of Criminal Procedure, subject to the following provisions:

(1) The Keeper of the Seals, Minister of Justice, may at any time issue any type of warrant against any person if there is serious evidence of his having committed an offence against the security of the State. The warrant shall be signed by the issuing authority and shall bear his seal; it shall state the facts which are the subject of the proceedings and the identity of the person against whom the proceedings are being taken.

Authority to issue warrants may be delegated to the *commissaire du gouvernement* by the Keeper of the Seals, Minister of Justice, who shall supervise their execution.

(2) In the cases provided for in articles 87 to 90 of the Code of Criminal Procedure, searches and seizures of any kind may be carried out in any place and by day or by night.

(3) The examining judge may give commissions rogatory only to agents of the criminal police as referred to in article 9.

Art. 11. The examining judge may investigate a case only upon an introductory application by the *commissaire du gouvernement.*

The provisions of articles 113 *et seq.* of the Code of Criminal Procedure concerning provisional release shall not apply in respect of offences against the security of the State.

Art. 12. As soon as it appears to him that the investigation has been concluded, the examining judge shall transmit the file to the *commissaire du gouvernement,* who shall address his applications to him within two days.

Art. 13. If the examining judge considers that the facts do not constitute a serious offence *(crime),* correctional offence *(délit)* or petty offence *(contravention),* or if the perpetrator of an offence within the jurisdiction of the State Security Court remains unknown, or if there is not sufficient evidence against the accused, the examining judge shall dismiss the case.

An accused person held in custody pending trial shall then be released.

Art. 14. If the examining judge considers that there is evidence that the accused has committed an offence within the jurisdiction of the State Security Court, he shall issue an order to that effect, setting forth the legal definition of the acts imputed to the accused and the grounds on which the evidence is found sufficient. The accused shall be informed of this order and notice thereof shall be given to his counsel.

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* Text published in the *Journal Officiel de la République Togolaise*, No. 451, special issue, of 14 September 1970.

Art. 15. The accused shall be committed for trial before the State Security Court on the basis of a decree of the Council of Ministers.

Art. 16. The matter shall be brought before the State Security Court by means of a summons issued directly to the accused by the *commissaire du gouvernement.* This summons shall refer to the order of the examining judge and to the decree of committal for trial; it shall include the legal definition of the acts in question.

If the trial court finds that any of the above formalities has not been observed, it shall automatically order the release of the accused.

Art. 17. If the examining judge considers that there is evidence against the accused of an offence not falling within the jurisdiction of the State Security Court, he shall refer the case to the court normally competent.

In such a case, the actions whereby proceedings have been instituted and the investigation conducted and any formal procedures that have been executed or decisions that have been taken previously shall remain valid and need not be repeated.

Art. 18. In the period between the conclusion of the investigation and the appearance of the accused before the State Security Court, the President of the Court may, if he considers the investigation incomplete or if new information is brought to light after its conclusion, order any inquiry to be made which he considers necessary.

He shall refer the file of the case to the *commissaire du gouvernement*, who shall request the examining judge of the Court to take the measures ordered; the examining judge shall be bound by any such new applications.

Art. 19. Appearance before the State Security Court shall follow receipt of a summons issued by the *commissaire du gouvernement.*

Three clear days shall elapse between the date of the summons and the date of the appearance; during that time the file shall be at the disposal of the accused's counsel, who shall study it without removing it.

Art. 20. The accused may appoint a counsel to defend his interests before the State Security Court; if he has no counsel, the President of the Court shall appoint one for him *ex officio.*

Only defence counsel registered by the Court of Appeals of Togo shall be permitted to defend accused persons.

Art. 21. At the commencement of the hearing the President shall draw the attention of all counsel to the provisions of article 311 of the Code of Criminal Procedure.

Art. 22. The hearings of the State Security Court shall be public; if, however, there appears to be a threat to public order, the Court may, by a decision rendered in open court, order that the hearings shall be held *in camera.*

The decision to hold hearings *in camera* shall also apply to hearings at which points of law are considered.

The decision on the main issue shall always be pronounced in open court.

Art. 23. The rules laid down by the Code of Criminal Procedure for correctional proceedings shall be applicable to proceedings before the State Security Court.

Art. 24. The President of the State Security Court shall have the discretionary powers provided for in articles 268 and 269 of the Code of Criminal Procedure.

Art. 25. Any breach committed in court by a counsel of the obligations incumbent upon him by virtue of his oath may be immediately punished by the State Security Court at the request of the *commissaire du gouvernement.* The sanctions to be applied are those provided for by the decree of 8 April 1935 regulating the profession of defence counsel in Togo.

Art. 26. After all parties have been heard, the President shall declare the hearing adjourned and the Court shall retire to the conference room.

During the deliberations the members of the Court may not communicate with any persons outside the Court and may not separate until the judgement has been pronounced.

Neither the *commissaire du gouvernement* nor the *greffier* may be present during the Court's deliberations.

The penalties applicable by the State Security Court are those provided for in the Penal Code.

Art. 27. There shall be no appeal from the orders of the examining judge or the judgements of the Court.

The procedure relating to failure to appear in correctional cases shall be applicable.

Art. 28. Conviction by the State Security Court shall entail the stripping from the convicted person of any national honours he has been accorded.

Conviction may also, if so decided by the State Security Court, entail the total or partial confiscation of property.

Art. 29. The judgements of the Court shall be enforceable immediately unless a petition for reprieve is submitted within 24 hours after the judgement is pronounced.

Art. 30. No civil action may be brought before the State Security Court.

Art. 31. The provisions of article 463 of the Penal Code and of articles 479 and 485 (new) of the Code of Criminal Procedure, concerning stay of execution, shall not apply to offences falling within the jurisdiction of the State Security Court.

...

TRINIDAD AND TOBAGO

THE EMERGENCY POWERS ACT, 1970

Act No. 13 of 1970, assented to on 30 April 1970[1]

...

3. (1) During the period of public emergency the Governor-General may, due regard being had to the circumstances of any situation arising or existing during such period, make regulations for the purpose of dealing with that situation, and issue orders and instructions for the purpose of the exercise of any powers conferred on him or any other person by this Act.

(2) Regulations made under subsection (1) may make provision with respect to all or any of the following matters that is to say:

(a) Censorship, and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communications;

(b) Prohibiting or restricting the possession or use by any person or body of persons of any specified articles;

...

(f) The taking, possession and disposal of any property which is in a dangerous state or injurious to the health of human beings, animals or plants;

(g) Amending any law, suspending the operation of any law, and applying with or without modification any law, other than the Trinidad and Tobago (Constitution) Order-in-Council, 1962;

(h) Authorizing the search of persons and premises and the seizure of anything and its detention for so long as may be necessary for the purposes of any examination, investigation, trial or inquiry;

...

(k) The appropriation, or the taking of possession or control and the use of, or on behalf of the Government of any property or undertaking, save that any regulations made under this paragraph that make provision for the compulsory taking possession of, or the compulsory acquisition of any interest in or right over, property of any description shall require the payment of adequate compensation in that behalf;

(l) Requiring persons to do work or render services;

(m) The payment of remuneration to persons affected by the regulations and the determination of such remuneration;

(n) The apprehension, trial and punishment of persons offending against the regulations or against any law in force in Trinidad and Tobago, including the forfeiture of any property by way of penalty for such offence; and

(o) Prescribing anything by this Act required to be prescribed;

and any regulations made under the foregoing provisions of this section may contain such incidental and supplementary provisions as are regarded necessary or expedient for the purposes of the regulations.

(3) Such regulations may contain provisions for imposing on any person contravening the regulations, a fine, recoverable on summary conviction of five thousand dollars or imprisonment for two years or a sentence to whipping or flogging in lieu of, or in addition to, imprisonment.

4. (1) Until regulations otherwise provide, the Commissioner of Police is hereby authorized to exercise the following powers:

(a) To prohibit or restrict the possession or use by any person or body of persons of any specified articles;

(b) To impose on any person any restrictions in respect of his employment or business, in respect of his place of residence, and in respect of his association or communication with other persons;

(c) To prohibit any person from being out of doors between such hours as may be specified, except under the authority of a written permit granted by such authority or person as may be specified;

(d) To require any person to notify his movements in such manner, at such times, and to such authority or person as may be specified;

(e) To prohibit any person from travelling except in accordance with permission given to him by such authority or person as may be specified;

(f) To require any person to quit any place or area or not to visit any place or area.

(2) The powers conferred by subsection (1) may be exercised by Order, and except where the

[1] Government Printer, Trinidad, Trinidad and Tobago, 1970.

Order is directed to a particular person the Order shall be published in the *Gazette*.

5. If at any time it is impossible or impracticable to publish in the *Gazette* any regulation, notice or Order in pursuance of this Act, the Governor-General or the Commissioner of Police may cause the same to be published by notices thereof affixed to public buildings or distributed amongst the public or by oral public announcements.

6. (1) No person shall be liable to any suit or action in respect of any act done under lawful direction and authority pursuant to the provisions of this Act, but the Governor-General may in his discretion order that compensation shall be paid to any person upon being satisfied that such person has suffered loss or damage by reason of the exercise of any powers conferred by section 3 other than subsection (2) *(k)* thereof and section 4.

(2) Compensation ordered to be paid under subsection (1) is hereby charged upon and shall be paid out of the Consolidated Fund.

7. (1) Except with the prior permission in writing of the Commissioner of Police, the grant of which shall be in his discretion, no person shall hold or take part in any public march or in any public meeting.

. . .

(3) Nothing in this section shall apply to any *bona fide* horse racing or other sport meeting held under the authority of a written permit issued by the Commissioner of Police or any religious ceremony, including a wedding or funeral, not being in any way connected with any demonstration or celebration.

(4) The grant of any permission under this section may be subject to such terms and conditions as the Commissioner of Police may think fit for giving effect to this Act.

(5) If any persons, to the number of four or more, assemble together in any public way or public place or in any place adjacent to that way or place, each of those persons who refuses to disperse when required to do so by any police officer, shall be guilty of an offence under this Act.

8. (1) No person shall enter any protected place unless he is authorized by the occupier thereof or by the Senior Police Officer of the Division in which that place is situated.

. . .

(4) In this Act "protected place" means a place specified by the Commissioner of Police as a protected place by a Notice displayed at such place or by notice published in the *Gazette*.

9. (1) Subject to the provisions of section 12, any person who, without lawful authority, the burden of proof as to lawful authority lying upon him, purchases, acquires or has in his possession any firearm, ammunition or explosive is guilty of an offence.

. . .

13. No person shall have in his possession or under his control any document of such a nature that the dissemination of copies thereof is likely to lead to a breach of the peace or to cause disaffection or discontent among persons.

14. (1) No person shall:

(a) Endeavour, whether orally or otherwise, to influence public opinion in a manner likely to be prejudicial to public safety and order; or

(b) Do any act or have any article in his possession with a view to making or facilitating the making of any such endeavour.

(2) No person shall in any public place or in any vehicle make use of any instrument for the amplification of sound.

(3) No person shall on any premises in his occupation or under his control make use of or cause or permit any person to make use of any instrument for the amplification of sound whereby reports or statements may be heard from or about such premises by members of the public.

15. Notwithstanding any rule of law to the contrary, a police officer may without warrant and with or without assistance and with the use of force, if necessary:

(a) Enter and search any premises;

(b) Stop and search any vessel, vehicle or individual whether in a public place or not, if he suspects that any evidence of the commission of an offence against sections 9, 13 and 14 is likely to be found on such premises, vessel, vehicle or individual and may seize any evidence so found.

16. (1) Notwithstanding any rule of law to the contrary, a police officer may arrest without warrant any person who he suspects has acted or is acting or is about to act in a manner prejudicial to public safety or to public order or to have committed or is committing or is about to commit an offence against this Act or the regulations; and such police officer may take such steps and use such force as may appear to him to be necessary for effecting the arrest or preventing the escape of such person.

(2) Subject to this Act a person arrested by a police officer under subsection (1) may be detained in custody for the purposes of inquiries.

(3) No person shall be detained under the powers conferred by this section for a period exceeding 24 hours except with the authority of a magistrate or of a police officer not below the rank of Assistant Superintendent on either of whose direction such person may be detained for such further period not exceeding seven days as in the opinion of such magistrate or police officer, as the case may be, is required for the completion of the necessary inquiries, except that no such direction shall be given unless such magistrate or

police officer, as the case may be, is satisfied that such inquiries cannot be completed within a period of 24 hours.

17. The provisions of the Schedule shall have effect for the purpose of the preventive detention of persons.

18. Whenever under this Act a female is searched, the search shall be made by another female.

19. (1) Notwithstanding any rule of law to the contrary, but subject to this Act, no bail shall be allowed in the case of any person charged with an offence involving a breach of the peace or any offence against the person or property or against this Act or any regulations, orders, instructions or directions made thereunder, if it is shown to the satisfaction of a magistrate or a Justice of the Peace that it is reasonably apprehended that the person charged is likely to engage or to incite persons to engage in the commission of an offence against public order, public safety or defence.

(2) The writ of *habeas corpus* shall not lie in the case of any person denied bail under subsection (1) or detained under section 16 or in respect of whom a detention order is in force under the provisions of the Schedule and no jurisdiction to grant bail in the case of such denial shall be exercised by any Judge of the Supreme Court under any rule of law or other authority.

(3) Upon the cessation of this Act nothing in this section shall be treated as continuing to have effect, in consequence of the continuance of any prosecution for an offence hereunder or for any other reason.

...

24. This Act shall cease to have effect in accordance with section 4 of the Constitution,[2] unless sooner determined by Proclamation of the Governor-General published in the *Gazette*, and such Proclamation may relate to any particular section or part thereof.

[2] For extracts from the Constitution, see *Yearbook on Human Rights for 1962*, pp. 294-299.

THE STRI SEVAK SABHA INCORPORATION ACT, 1970

Act No. 43 of 1970, assented to on 4 November 1970[3]

...

2. The Trustees for the time being and their successors in office as Trustees of the Stri Sevak Sabha shall be and are hereby created a body corporate by the name of the Stri Sevak Sabha Incorporated (hereinafter called "the Trustees") and by that name shall have perpetual succession and also by that name may sue and be sued and shall have a Common Seal with power to change such seal.

...

5. The aims and objects of the Stri Sevak Sabha are as follows:

(a) To carry on Hindu religious activities;

(b) To do social work, irrespective of race, creed, etc.;

(c) To encourage educational activities;

(d) To publish literature and to give lectures;

(e) To hold property which belongs to the Stri Sevak Sabha;

(f) To encourage Inter-Faiths and Inter-Racial activities;

(g) To establish branches of this body;

(h) To do all such acts and things as are necessary or proper for the furtherance of the religious, social and cultural advancement of Hindu women.

...

[3] *Ibid.*

TUNISIA

NOTE*

In 1970, the Tunisian National Assembly enacted a number of laws of a social character.

Furthermore, a number of conventions were signed and given effect in Tunisia, i.e. ILO Conventions Nos. 16, 59, 77, 117, 120 and 127, which were published in the *Journal officiel de la République tunisienne* in Decree No. 70-67 of 25 February 1970 and Decree No. 70-517 of 21 September 1970.

I. Legislation

A. ACT No. 70-6 OF 3 FEBRUARY 1970 CONCERNING REDUCTION OF RENTS FOR CERTAIN DWELLING PLACES (*Journal officiel de la République tunisienne*, 6 to 10 March 1970)

Under this new Act, rents may be reduced by 20 per cent or 10 per cent (article 1), i.e. by 20 per cent in the case of one or more rooms forming part of dwelling rented by the room, and by only 10 per cent in other cases.

However, two conditions must be met in order to be eligible for the 10 per cent reduction:

(a) The dwelling must have been built before 1 January 1957;

(b) The rent must not exceed 30 dinars.

In the event of a dispute between the landlord and the tenant concerning the amount of rent payable, the matter may be referred to the cantonal judge of the neighbourhood, who shall determine the rent on the basis of the assessed rental value for purposes of determining municipal taxes and shall then reduce it in accordance with the provisions of article 1 of the Act.

B. ACT No. 70-9 OF 10 MARCH 1970 ESTABLISHING THE NATIONAL OFFICE OF UNIVERSITY SERVICES (Office national des œuvres universitaires) (*Journal officiel de la République tunisienne*, 6 to 10 March 1970)

Since its independence, Tunisia has steadily increased its efforts to promote education, which is regarded as indispensable to progress. For example, a very substantial portion of the Tunisian budget is allocated to education: 8.2 per cent in 1968, compared with 5 to 7 per cent in certain countries which are regarded as particularly advanced in this respect (United States of America, USSR, Japan).

The latest "investment" in this field is the establishment of a National Office of University Services.

It is a public body acting under the responsibility of the Minister of Education, Youth and Sports. It is a body corporate and enjoys financial autonomy (article 1).

It is administered by a Director, who is appointed by decree on the recommendation of the Minister of Education, Youth and Sports, and he is assisted by a committee, the composition of which is established by order of the Minister of Education, Youth and Sports (article 3).

The purpose of the Office is defined in article 2 of the Act:

(a) To provide students, in the context of national policy concerning university services, with satisfactory living conditions and facilities for study;

(b) To centralize and administer scholarships in higher education;

(c) To construct, administer and supervise student hostels and university communities (cités universitaires) and, in general, to provide accommodation for students in Tunisia and abroad;

(d) To promote medical and social services for students;

(e) To administer or supervise all other services to assist students.

C. ACT No. 70-34 OF 9 JULY 1970 CONCERNING SOCIAL SECURITY (*Journal officiel de la République tunisienne*, 10 to 14 July 1970)

This Act amends, supplements and broadens the legislation in force, i.e. Act No. 60-30 of 14 December 1960.

It amends the Act by introducing improvements making it more favourable to workers. Those improvements affect:

The procedures for the participation of employers in the scheme and for the registration of workers;

* Note communicated by the Tunisian Government.

The benefits, principally social insurance benefits.

1. *Participation and registration*

Under the new legislative provisions, employers of wage-earning personnel are obligated to participate in the National Fund and to register their workers. To that end, workers have to furnish employers with all documents establishing or modifying their entitlement to social security benefits, together with identification papers.

Unlike the 1960 Act, the new Act requires the insured person himself to register only when the employer refuses or neglects to do so.

2. *Social insurance*

The social insurance scheme of the National Social Security Fund covers:

Cash benefits in the event of sickness, maternity or death;

Medical care, in the case of consultations or hospitalization, in the health establishments coming within the jurisdiction of the Ministry of Public Health.

(a) *Sickness, maternity or death benefits*

The improvements in this area include:

(i) *Elimination of the qualifying period*

Benefits are now payable once the workers are registered and the workers are not required, as was previously the case, to have completed a qualifying period of six months for sickness or death benefits and 12 months for maternity benefits.

(ii) *Reduction in the periods of employment establishing entitlement to the various benefits*

Sickness benefit

To be eligible for this benefit, wage-earners were required to have worked a total of 90 days during the six calendar months preceding the quarter in which they were first incapacitated.

The new Act provides for a more flexible system and establishes alternative requirements.

The worker has to show proof that he has worked either a total of at least 50 days during the six calendar months preceding the quarter in which he stopped working, or a total of at least 80 days during the 12 months preceding the quarter in which he stopped working.

This requirement, i.e. a period of employment prior to the event which caused him to stop working, is no longer necessary in the case of accident or injury.

Maternity benefit

Women wage-earners who stop working because of pregnancy or confinement are entitled to maternity benefit. They no longer have to show proof that they have worked a total of 150 days; henceforth they have to have worked only 80 days.

Death benefit

This benefit is payable to the insured person in the event of the death of the spouse or uninsured dependent children. Wage-earners must, however, show proof that they have worked at least 50 days during the six calendar months, or a total of at least 80 days during the 12 calendar months which preceded the quarter in which the death occurred. Previously, the requirement was a minimum of 90 days in the six calendar months preceding the quarter in which the death occurred.

(iii) *Reduction in the qualifying period for all sickness benefits from 20 days to five days*

This requirement is abolished in the case of long illness and all cases of hospitalization, injury or accident.

(iv) *Extension of benefits for a further period, prohibited under previous legislation*

However, certain conditions must be met:

The worker's incapacity must be certified by a physician;

The sickness, injury or accident must not have been self-induced or self-inflicted;

The worker has to show proof that he has worked a total of at least 50 days during the six calendar months preceding the quarter in which he stopped working or a total of at least 80 days during the 12 months preceding the quarter in which he stopped working.

(v) *Continued payment of family allowances to wage-earners participating in the social insurance scheme for the entire period of absence from work caused by sickness covered by the National Fund*

Previously this benefit could not be paid for more than three months in any period of 365 days.

(b) *Out-patient care or hospitalization*

Out-patient care and free hospitalization are provided for wage-earners registered with the National Fund under the social insurance scheme who are able to show proof that they have worked a total of at least 50 days during the six months, or 80 days during the 12 months which precede the quarter in which they become hospitalized.

Previous legislation required them to have been registered for at least six months and, in order to be eligible for free hospitalization, to have worked a total of at least 90 days during the six calendar months preceding the quarter in which they became hospitalized.

To obtain out-patient care, wage-earners or their dependants must be able to produce the family medical card issued by the National Fund.

The Act is made more comprehensive because it extends social security coverage by including certain categories which were previously excluded, thus bridging a gap in the legislation in force.

The following groups are also covered by the system of social security: persons employed as watchmen or janitors in buildings where space is rented; and all agricultural workers, wage-earners and workers in co-operatives.

They are covered in the new Act by the whole of section II *bis* entitled: "Social insurance for agricultural workers".

Henceforth, agricultural employers and the heads of agricultural enterprises of any kind must join the National Fund and register salaried workers as soon as they are hired, thus ensuring their entitlement to all social benefits, or become liable to such penalties as fines, discretionary assessment of taxes or forcible collection of taxes.

II. International Conventions

Convention (No. 16) concerning the compulsory medical examination of children and young persons employed at sea.

Convention (No. 59) fixing the minimum age for admission of children to industrial employment, adopted by the General Conference of the International Labour Organisation at its twenty-third session, Geneva, 22 June 1937.

Convention (No. 77) concerning medical examination for fitness for employment in industry of children and young persons, adopted by the General Conference of the International Labour Organisation, Montreal, 9 October 1946.

Convention (No. 117) concerning basic aims and standards of social policy, adopted by the General Conference of the International Labour Organisation, Geneva, 22 June 1962.

Convention (No. 120) concerning hygiene in commerce and offices, adopted by the General Conference of the International Labour Organisation, Geneva, 8 July 1964.

Convention (No. 127) concerning the maximum permissible weight to be carried by one worker, adopted by the General Conference of the International Labour Organisation, Geneva, 30 June 1967.

TURKEY

NOTE*

COURT DECISION AND REGULATIONS CONCERNING HUMAN RIGHTS PROMULGATED IN 1970

Court decision

By decision No. 1969/2-1969/33, published in *Official Gazette*, No. 13497, of 18 May 1970, the Constitutional Court ruled with respect to Act No. 5590, of 8 March 1950, concerning Chambers of Commerce and Industry, Chambers of Commerce, Chambers of Industry, Commodity Exchanges and the Union of Chambers of Commerce and Industry, Chambers of Commerce, Chambers of Industry and Commodity Exchanges, that the provision in article 76, sixth paragraph, that "recourse cannot be had to the judicial authorities" was contrary to article 114 of the Constitution and accordingly annulled it.

Article 114, para. 1, of the Constitution reads: "No act or procedure of the Administration shall in any circumstances be exempt from review by the judicial authorities."

Regulations

I. *Occupational health and safety regulation*

This regulation contains provisions concerning *(a)* requisite health conditions and safety measures at undertakings; *(b)* requisite health conditions and safety measures at places where workers sleep at night; *(c)* measures to prevent diseases which may be caused by equipment, tools, machinery and raw materials used at undertakings.

II. *Regulation concerning special procedures and rules in respect of jobs which are worked by shifts*

This regulation describes special procedures and rules concerning hours of work, night work, mandatory rest periods during working hours and weekly rest days in the case of operations the nature of which is such that they are carried on continuously by successive shifts or by alternating shifts.

III. *Regulation concerning the suspension of operations at undertakings or the closing of such undertakings*

This regulation sets forth rules concerning the conditions in which the operation or use of installations and arrangements or machinery and equipment endangering the lives of workers at undertakings is to be suspended and the conditions in which permission may be given for the resumption of their operation or use.

IV. *Regulation concerning notification by employers to the Employment Service of their labour requirements*

This regulation sets forth principles governing notification by employers to the Employment Service of their labour requirements.

V. *Regulation concerning the scheduling of work in operations the nature of which is such that a work period consisting of a week divided into working days is not feasible*

This regulation sets forth rules for scheduling working hours and work periods in operations the nature of which is such that a work period consisting of a week divided into working days is not feasible, including work performed in moving vehicles or vessels in connexion with road and rail transport operations and transport operations on lakes and waterways not subject to the Maritime Labour Act.

* Note furnished by the Government of Turkey.

UGANDA

THE MAGISTRATES' COURTS ACT, 1970

Act No. 13 of 1970, assented to on 5 June 1970[1]

PART I

Establishment of Magistrates' Courts, appointment of Magistrates and Law to be administered

1. The Minister may, after consultation with the Chief Justice, by statutory instrument divide Uganda into magisterial areas for the purposes of this Act.

2. There shall be established in such places in each magisterial area as the Minister may, after consultation with the Chief Justice, by statutory instrument designate magistrates' courts to be known as the magistrate's court for the area in respect of which it has jurisdiction.

...

8. The jurisdiction of a magistrate's court shall, subject to the provisions of this Act and of any other written law limiting or otherwise relating to the jurisdiction of that court or of the presiding magistrate, be exercised in conformity with the law with which the High Court is required to conform in exercising its jurisdiction by the Judicature Act, 1967.[2]

9. (1) Subject to the provisions of this section, nothing in this Act shall deprive a magistrate's court of the right to observe and to enforce the observance of, or shall deprive any person of the benefit of, any civil customary law which may be applicable that is not repugnant to justice, equity or good conscience or incompatible either in terms or by necessary implication with any written law for the time being in force.

(2) Notwithstanding the provisions of subsection (1) of this section, no party to a civil cause or matter shall be entitled to claim the benefit of any civil customary law, if it appears, either from express contract or from the nature of the transactions out of which any civil cause or matter shall have arisen, that he agreed or must be taken to have agreed that his obligations in connexion with all such transactions should be regulated exclusively by some law other than civil customary law.

(3) In civil causes or matters where no express rule is applicable to any matter in issue, a magistrate's court shall be guided by the principles of justice, equity and good conscience.

10. (1) In every civil cause or matter before a magistrate's court, law and equity shall be administered concurrently.

...

(3) If in any cause or matter there is a conflict or variance between the rules of equity and the rules of common law with reference to the same subject, the rules of equity shall prevail.

PART II

Prevention of offences

11. (1) Whenever a Chief Magistrate or a Magistrate Grade I is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit to fix.

...

25. A magistrate may refuse to accept any surety offered under any of the preceding sections of this Part of this Act on the ground that, for reasons to be recorded by the magistrate, such surety is an unfit person.

...

27. Whenever a Chief Magistrate or Magistrate Grade I is of the opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate may, if he thinks fit, order such person to be discharged.

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[1] Text printed and published by the Government Printer, Entebbe, Uganda.

[2] For extracts from the Judicature Act, 1967, see *Yearbook on Human Rights for 1967*, pp. 327-329.

28. The High Court may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

...

PART III

Place of criminal trials

30. Every magistrate's court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction and is charged with an offence committed within Uganda, or which according to law may be dealt with as if it had been committed within Uganda, and to deal with the accused person according to its jurisdiction.

...

39. (1) The place in which any criminal court is held for the purpose of trying any offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the magistrate may, if he thinks fit, order at any stage of the inquiry into or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the court.

...

40. (1) Whenever it is made to appear to the High Court,

(a) That a fair and impartial trial or inquiry cannot be had in any magistrate's court; or

(b) That some question of law of unusual difficulty is likely to arise; or

(c) That a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

(d) That an order under this section will tend to the general convenience of the parties or witnesses; or

(e) That such an order is expedient for the ends of justice or is required by any provision of this Act,

it may order,

(i) That any offence be tried or inquired into by any court not empowered under the preceding sections of this Part of this Act, but in other respects competent to inquire into or try such offence;

(ii) That any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction;

(iii) That an accused person be committed for trial to itself.

...

PART IV

Institution of criminal proceedings

41. (1) Criminal proceedings may be instituted in one of the following ways,

(a) By a police officer bringing a person arrested with or without a warrant before a magistrate upon a charge; or

(b) By a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; or

(c) By any person, other than a public prosecutor or a police officer, making a complaint as provided in subsection (3) of this section and applying for the issue of a warrant or a summons in the manner hereinafter mentioned.

...

(3) Any person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person, may make a complaint thereof to a magistrate who has jurisdiction to try or inquire into the alleged offence, or within the local limits of whose jurisdiction the accused person is alleged to reside or be. Every such complaint may be made orally or in writing signed by the complainant, but if made orally shall be reduced into writing by the magistrate and when so reduced shall be signed by the complainant.

...

PART V

Summons

43. ...

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge. It shall state shortly the offence with which the person against whom it is issued is charged.

...

PART VI

Warrant of arrest

53. Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

54. (1) If the accused person, other than a corporation, does not appear at the time and place appointed in and by the summons . . . the court may issue a warrant to apprehend him and cause him to be brought before such court.

(2) If a corporation does not appear in the manner provided for under this Act, the court may cause any officer thereof to be summoned before

it in the manner provided for under this Act for compelling the attendance of witnesses, and if such officer fails to attend, he may be dealt with under the provisions of subsection (1) of this section.

...

(4) A warrant shall not be issued under this section for the arrest of any person unless the court is satisfied by evidence on oath that the summons directed to that person was duly served.

...

65. When any person who is bound by any bond taken under this Act to appear before a court does not so appear, the magistrate presiding in such court may issue a warrant directing that such person be arrested and produced before him.

...

PART VII

Searches and search warrants

68. When a police officer has reason to believe that material evidence can be obtained in connexion with an offence for which an arrest has been made or authorized, any police officer may search the dwelling or place of business of the person so arrested or of the person for whom the warrant of arrest has been issued and may take possession of anything which might reasonably be used as evidence in any criminal proceedings.

69. Where it is proved on oath to a magistrate's court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, vessel, carriage, box, receptacle or place, the court may by warrant (called a search warrant) authorize the person to whom the warrant is directed to search the building, vessel, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

...

PART VIII

Provisions as to bail

74. (1) A magistrate's court before which an accused person, other than a person accused of an offence punishable by death, appears or is brought, may at any stage in the proceedings release him on bail, that is to say, on taking from him a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case to appear before such a court, on such a date and at such a time as is named in the bond.

...

75. (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.

...

PART IX

Charges

83. Every charge shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

...

PART X

Previous conviction or acquittal

87. A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

88. A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he might have been charged on the former trial ...

89. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which such person was convicted or acquitted may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted.

90. A person convicted or acquitted of any offence constituted by any acts may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

...

PART XI

Witnesses and evidence

92. (1) If it is made to appear that material evidence can be given by or is in the possession of any person, it shall be lawful for a magistrate's court having cognizance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents, writings or things in his possession or power which

may be specified or otherwise sufficiently described in the summons.

...

93. If, without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

...

PART XII

Procedure in case of the insanity or other incapacity of an accused person

111. (1) When in the course of a trial or preliminary proceedings a magistrate's court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness.

(2) If the court is of opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.

...

PART XIII

Provisions relating to the hearing and determination of criminal cases

117. (1) If, in any case which a magistrate's court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the prosecutor, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit.

(2) The dismissal of a charge under this section shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

...

154. Any person accused of an offence before a magistrate's court may of right be defended by an advocate.

...

156. In criminal cases, a magistrate's court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for assault, or for any other offence of a personal or private nature, not amounting to felony and not aggravated in degree, in terms of payment of compensation or other terms approved by such court, and may, thereupon, order the proceedings to be stayed.

PART XIV

Criminal jurisdiction of Magistrates' Courts

...

158. ...

(3) Where there is express provision for the imposition of corporal punishment in any written law and subject to the provisions of section 191 of this Act, on a conviction a Chief Magistrate or a Magistrate Grade I may pass a sentence of corporal punishment not exceeding 12 strokes in number.

(4) No sentence of corporal punishment shall be passed by a Magistrate Grade II or Grade III except where the provisions of subsection (3) of section 191 of this Act apply, and no such sentence shall exceed six strokes in number.

159. (1) Subject to the provisions of this section, a Chief Magistrate or a Magistrate Grade I may, on conviction, pass a sentence of preventive detention in accordance with the provisions of the Habitual Criminals (Preventive Detention) Act.

(2) Notwithstanding the provisions of subsection (1) of section 2 of the Habitual Criminals (Preventive Detention) Act,

(a) Where a Chief Magistrate passes a sentence of preventive detention the total term of preventive detention and any additional sentence of imprisonment that may be imposed shall not exceed 10 years;

(b) Where a Magistrate Grade I passes a sentence of preventive detention, no additional sentence of imprisonment may be imposed.

...

168. (1) Whenever a magistrate's court passes a sentence which requires confirmation, the court imposing such sentence may, in its discretion, release the person sentenced on bail pending confirmation or such other order as the confirming court may make.

...

PART XVI

Provisions relating to sentences imposed by Magistrates' Courts

187. (1) A warrant under the hand of the magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Uganda, shall be issued by the magistrate, and shall be full authority to the officer-in-charge of such prison and to all other persons for carrying into effect the sentence (not being a sentence of death) described in such warrant.

...

189. (1) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

(2) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

190. (1) A magistrate's court shall not pass a sentence of imprisonment on any person who is, in the opinion of the court, under the apparent age of 18 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, in such place and manner as it thinks fit and shall transmit the court record, or a certified copy thereof, to the Minister.

. . .

191. (1) Only one sentence of corporal punishment shall be imposed at one time. Such corporal punishment shall be inflicted with a rod or cane of a type to be approved by the Minister. The sentence shall specify the number of strokes which shall not exceed the number permitted by the provisions of subsection (3) or (4) of section 158 of this Act, as may be appropriate.

(2) No sentence of corporal punishment shall be passed upon any of the following persons,

(a) Females;

(b) Males whom the court considers to be more than 45 years of age.

(3) Whenever a male person under the age of sixteen years is convicted of any 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 may be imposed in default of payment of a fine.

(4) When the sentence of corporal punishment is to be carried out, there shall be present a Government medical officer and no such sentence shall be carried out unless such medical officer has, after examination, certified that in his opinion the prisoner is physically fit to undergo the whole of the sentence of corporal punishment about to be inflicted upon him. If such medical officer is unable to certify as aforesaid, neither the sentence nor any part of it shall be carried out and the sentence shall be deemed . . . to have been wholly prevented from being carried out.

. . .

205. When sentence is passed under this Act on an escaped convict, such sentence, if of fine or corporal punishment, shall, subject to the provisions of this Act and any other law for the time being in force, take effect immediately, but if of imprisonment shall not take effect until the convict has served the period of imprisonment that remained unexpired at the date of his escape from prison.

. . .

PART XVII

Costs, compensation and restitution

. . .

212. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the magistrate's court before which he is charged may order,

(a) That the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or

(b) That the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

. . .

PART XVIII

Criminal appeals

216. (1) Subject to the provisions of any other written law and save as provided in this section, an appeal shall lie,

(a) To the High Court, by any person convicted on a trial by a court presided over by a Chief Magistrate or a Magistrate Grade I;

(b) To a court presided over by a Chief Magistrate, by any person convicted on a trial by a Magistrate Grade II or Grade III.

. . .

PART XXI

Civil appeals

232. (1) Subject to the provisions of any written law and save as provided in this section, an appeal shall lie,

(a) From the decrees or any part of decrees and from the orders of a magistrate's court presided over by a Chief Magistrate or a Magistrate Grade I in the exercise of its original civil jurisdiction, to the High Court;

(b) From the decisions, judgments and orders of a magistrate's court, whether interlocutory or final, presided over by a Magistrate Grade II or Grade III, to a court presided over by a Chief Magistrate;

(c) From decrees and orders passed or made in appeal by a Chief Magistrate, with the leave of the Chief Magistrate or of the High Court, to the High Court.

. . .

245. This Act shall come into force on such date as the Minister may, by statutory instrument, appoint.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE*

In 1970, as a result of the successful implementation of the plan to develop social production in the Ukraine, further successes were achieved in the safeguarding of economic, social and cultural rights. The following data from the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR, dated 6 February 1971, describe these achievements.

The national income rose by 6 per cent during 1970.

The average annual number of manual and non-manual workers in the national economy was 16.2 million, an increase of 450,000, or 3 per cent, over the previous year. 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 average monthly cash wage for manual and non-manual workers in the national economy was 115 roubles, an increase of 4 per cent; with the addition of payments and benefits from social consumption funds, the average monthly wage was 158 roubles, as against 152 roubles in 1969. The wages of collective farm workers rose by almost 5 per cent.

Payments and benefits received by the population from social consumption funds totalled 11,800 million roubles, an increase of 7 per cent over the previous year. These funds provided free education, pensions, allowances, grants, medical care, free passes or reduced fares to sanatoria and rest homes, paid holidays, upkeep of kindergartens and crèches and other types of social and cultural services. In accordance with a decision by the Congress of Collective Farm Workers, social insurance for such workers was introduced providing for the payment of allowances for temporary inability to work, and sanatorium and health resort services for agricultural workers. The real income of workers, calculated on a *per capita* basis, increased during the year by 5 per cent.

In the towns and rural settlements of the Republic, 392,000 new, well-equipped apartments and individual dwellings with a total useful floor-space of 18.7 million square metres were brought into occupancy, affording improved living conditions for more than 500,000 families, or 1,8 million citizens. During the year, general education schools with space for 243,000 students, children's pre-school establishments with space for 82,000 and a large number of hospitals, polyclinics, clubs and other cultural and social facilities were built with finances provided by the State and by collective farms.

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, 807,000 in higher educational establishments, 798,000 in specialized secondary educational establishments and 448,000 in technical schools.

Some 812,000 persons graduated from eight-year schools, and 540,000 graduated from secondary general education schools. Of these totals, 49,000 and 169,000 respectively received incomplete secondary education in schools for working and rural youth. Enrolment in extended-day schools and groups was 1.3 million, or 12 per cent more than in the previous school year.

Attendance at full-time children's pre-school educational establishments totalled approximately 1.6 million, or 80,000 more than in 1969. More than 1 million children attended seasonal children's pre-school establishments. More than 4 million children and young people spent the summer at pioneer and school camps, children's sanatoria and holiday and tourist centres, or went on summer outings with children's institutions.

Over 326,000 young specialists graduating from higher and secondary specialized educational establishments were absorbed into the national economy, including 117,000 with higher education and 209,000 with secondary specialized education. In comparison with the previous year, the number graduating from higher and secondary specialized educational establishments increased by almost 20,000, or 6.5 per cent.

The enrolment figures totalled 155,000 at higher educational establishments and 241,000 at secondary specialized educational establishments. Large numbers of manual and non-manual workers and collective farm workers received training and obtained higher qualifications. During the year, more than 270,000 young skilled workers were trained and 306,000 persons were enrolled at

* Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

vocational technical schools. More than 4 million people trained for new occupations or obtained higher qualifications directly at institutions and organizations and at collective farms, by receiving individual or group instruction or taking courses.

Scientific workers numbered more than 130,000 at the end of the year; of these, more than 36,000 held the degree of Doctor of Science or that of Candidate of Science.

Medical services to the population continued to improve. During the year the number of doctors in all specialties rose by 4,000, and the number of hospital beds by more than 16,000. The number of beds in sanatoria, rest homes and convalescent homes also increased. More than 2 million persons rested or were cured in the sanatoria and health resort establishments of the Republic.

The population of the Republic on 1 January 1971 was 47.4 million.

UNION OF SOVIET SOCIALIST REPUBLICS

INFORMATION ON LEGISLATIVE AND ADMINISTRATIVE MEASURES BEARING ON HUMAN RIGHTS ADOPTED IN THE USSR IN 1970[1]

During 1970, the Supreme Soviet of the Union of Soviet Socialist Republics adopted a number of legislative measures in the field of human rights.

On 15 July 1970, at the first session of the Eighth Supreme Soviet of the USSR, the "Principles of the Labour Legislation of the USSR and the Union Republics"[2] were approved.

A number of individual articles and excerpts from articles of the "Principles of the Labour Legislation of the USSR and the Union Republics" are listed below.

"Article 2. Fundamental labour rights enjoyed by manual and non-manual workers, and their obligations

"The right of Soviet citizens to work is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the removal of the possibility of economic crises, and the abolition of unemployment.

"Manual and non-manual workers shall exercise their right to employment by signing a contract of employment at an undertaking, establishment, institution or organization. They have the right to a wage or salary guaranteed by the State in proportion to the quantity and quality of labour contributed. They have the right to leisure and rest in conformity with the laws on the limitation of the working day and working week and on annual paid leave, the right to healthy and safe working conditions, the right to free occupational and advanced training, the right to unite in trade unions, the right to take part in the management of production and the right to material maintenance in old age and in the event of sickness or disability at the expense of the State through State social insurance."

. . .

"Article 9. Guarantees on taking up employment

"Unjustified refusal to give employment is illegal.

"The Constitution of the USSR provides that in admitting a worker to employment any direct or indirect limitation of rights or the giving of direct or indirect privileges on the basis of sex, race, nationality or religious affiliation is prohibited."

. . .

"Article 12. Prohibition against demanding performance of work not stipulated in the contract of employment

"The management shall not demand that a manual or non-manual worker perform work which is not stipulated in the contract of employment."

"Article 13. Transfer to another post

"Transferring a manual or non-manual worker to another post at the same undertaking, establishment, institution or organization, transferring him to another undertaking, establishment, institution or organization or to a different locality, even together with the undertaking, establishment, institution or organization, shall be permitted only with the consent of the person concerned, except in cases provided for in articles 14 and 56 of these Principles."

. . .

"Article 16. Annulment of a contract of employment at the worker's initiative

"A manual or non-manual worker shall have the right to annul a contract of employment signed for an indefinite term, giving the management two weeks' notice in writing.

"A contract of employment signed for a fixed term...may be annulled before the expiry of the term by the worker if sickness or disability prevents him from performing his work as provided by the terms of the contract, if the management contravenes the labour legislation, the collective agreement or the contract of employment, or for other valid reasons."

. . .

"Article 18. Prohibition against annulment of a contract of employment at the initiative of the

[1] Information furnished by the Government of the Union of Soviet Socialist Republics.

[2] *Vedomosti Verkhovnogo Soveta SSSR*, No. 29, 22 July 1970, item 265.

management without consent of the works or local union committee

"The management of an undertaking, establishment, institution or organization shall not annul a contract of employment at its own initiative without the consent of the works or local union committee . . ."

. . .

"*Article 21. Normal hours of work*

"The normal hours of work for manual and non-manual workers employed in an undertaking, establishment, institution or organization shall not exceed 41 a week . . ."

"*Article 22. Reduced hours of work*

"Reduced hours of work shall apply in the following cases:

"(1) Manual and non-manual workers between 16 and 18 years of age: 36 hours a week; between 15 and 16 years of age: 24 hours a week;

"(2) Manual and non-manual workers employed in posts where the conditions of work are detrimental to health: not more than 36 hours a week.

"In addition to the above, USSR legislation prescribes shorter hours of work for certain categories of workers (such as teachers, doctors and others)."

. . .

"*Article 26. Part-time work*

"On taking up his employment or at any time subsequently, a manual or non-manual worker may enter into an agreement with the management that he shall work on a daily or weekly part-time basis . . ."

. . .

"*Article 29. Breaks for rest and meals*

"Manual and non-manual workers shall be entitled to a break for rest and meals not exceeding two hours. This break shall not be considered as part of the working hours.

"Where working conditions rule out the possibility of any such break, manual and non-manual workers shall be given the opportunity to eat while working . . ."

. . .

"*Article 32. Annual leave*

"Every manual and non-manual worker shall be entitled to annual leave during which he shall retain the right to his employment and average remuneration . . ."

. . .

"*Article 35. Unpaid leave*

"The management may grant short periods of unpaid leave for family reasons or other valid reasons to a manual or non-manual worker at his request."

. . .

"*Article 36. Payment according to work. Minimum wage*

"Pursuant to the Constitution of the USSR, the work of manual and non-manual workers shall be remunerated according to quantity and quality. It is illegal to pay reduced rates on account of age, sex, race or nationality.

"The monthly earnings of all manual and non-manual workers shall not be lower than the minimum rate fixed by the State."

. . .

"*Article 46. Guarantees to manual and non-manual workers elected to certain offices*

"A manual or non-manual worker who has been relieved from his post because he has been elected to office in a State body, Party organization, trade union, Young Communist League, co-operative or other social organization shall be reinstated in his post after his term of office has expired; if his post has been filled, he shall be appointed to an equivalent post either in the same undertaking, establishment, institution or organization or with his consent elsewhere."

"*Article 47. Guarantees to manual and non-manual workers while performing their state or social obligations*

"A manual or non-manual worker shall be guaranteed reinstatement in his post and his average remuneration while he is performing any obligations required by state or civic duties, if such obligations and duties may be carried out during normal working hours under USSR legislation . . ."

"*Article 48. Guarantees and compensations for manual and non-manual workers while on mission or transfer to employment in another locality*

"Manual and non-manual workers shall be entitled to reimbursement of expenses incurred and other forms of compensation arising from travel on mission, recruitment for another post or transfer to employment in other localities.

"Workers sent on mission shall retain their posts and average remuneration for the duration of the mission."

. . .

"*Article 66. Transfer to lighter work*

"The management shall transfer to lighter work any manual or non-manual worker whose state of health so requires, with the consent of the individual worker concerned."

. . .

"*Article 68. Work in which the employment of women is prohibited*

"It is unlawful to employ women in arduous work, work in unhealthful working conditions or underground work, except certain underground work which is non-manual or connected with sanitary, maintenance and other services."

"*Article 69. Restrictions on the employment of women on night work, overtime and travelling on missions*

"It is unlawful to employ women on night work, except in economic sectors where there is a special need to do so and such employment is permitted as a temporary measure.

"It is unlawful to employ pregnant women, nursing mothers or mothers with children under one year of age on night work, overtime, work on rest days or for travelling on missions.

"It is unlawful to employ women with children between one and eight years of age on overtime work or to send them on missions without their consent."

. . .

"*Article 71. Maternity leave*

". . . In addition to maternity leave for pregnancy and confinement a woman may, at her request, be granted additional leave without pay until her child reaches its first birthday."

"*Article 72. Breaks for feeding infants*

"Nursing mothers and women with infants under one year of age shall be entitled . . . to additional breaks to feed the infant."

. . .

"*Article 73. Guarantees on taking up employment and prohibition of dismissal in the case of pregnant women, nursing mothers and women with children under one year of age*

"It is unlawful to refuse to employ a woman or to reduce her remuneration on account of her pregnancy or the fact that she is feeding an infant.

"It is unlawful for the management to dismiss a pregnant woman, nursing mother or woman with children under one year of age, except in the case of total liquidation of the undertaking, establishment, institution or organization, in which case dismissal is permitted, but with the obligation to find alternative employment for the female employee."

. . .

"*Article 75. Employment prohibited for persons under 18 years of age*

"It is unlawful to employ persons under the age of 18 on arduous work or work in unhealthful or dangerous working conditions, or underground work."

. . .

"*Article 78. Prohibition of employment of manual or non-manual workers under 18 years of age on night work or overtime*

"It is unlawful to employ manual or non-manual workers under 18 years of age on night work, overtime or on rest days."

"*Article 79. Leave for manual and non-manual workers under 18 years of age*

"Annual leave shall be granted to workers under 18 years of age. . . in summer or, at their request, at any other time of the year."

. . .

"*Article 81. Guarantee of employment suitable to their training and skills for young workers and specialists who have completed their training at educational institutions*

"Young workers who have completed their training at vocational and technical schools and young specialists who have completed their training at higher and secondary specialized educational institutions shall be provided with employment in keeping with the skills and vocational training they have acquired."

. . .

"*Article 84. Privileges for manual and non-manual workers studying at general educational establishments or technical and vocational institutions*

"Manual and non-manual workers who combine work with study at general educational establishments or technical and vocational institutions shall be entitled to a shorter working week or shorter daily hours of work while drawing their normal pay and shall also enjoy other privileges."

"*Article 85. Privileges for manual and non-manual workers studying at higher and secondary specialized educational institutions*

"Manual and non-manual workers admitted to sit for the entrance examinations for higher and secondary specialized educational institutions shall be granted leave without pay.

"Manual and non-manual workers studying in evening courses or correspondence courses run by higher and secondary specialized educational institutions shall be granted educational leave while drawing their normal pay and shall also enjoy other privileges."

. . .

"*Article 90. Time-limits for application for hearing of labour disputes*

"Manual and non-manual workers may apply to the labour disputes board at any time, no time-limit being imposed for such application; in the case of questions concerning dismissal, the worker must apply to the district (municipal) People's Court within one month from the date on which the notice of dismissal is served."

. . .

"*Article 91. Reinstatement*

"In the case of unlawful dismissal or non-observance of the prescribed procedure for dismissal, or in the case of unlawful transfer to another post, the manual or non-manual worker shall be reinstated in his previous post by the body examining the dispute."

"*Article 92. Compensation for enforced idleness or work in a lower-paid post*

"A manual or non-manual worker unlawfully dismissed and reinstated subsequently in his previous post shall be awarded by court decision his average earnings for the period of enforced idleness from the date of his dismissal, for a period not exceeding three months.

"A manual or non-manual worker who is transferred unlawfully to another post and is subsequently reinstated in his previous post shall be awarded, by decision or ruling of the body hearing labour disputes, his average remuneration for the period of enforced idleness or the difference in pay for the duration of his work in the lower-paid post, for a period not exceeding three months."

. . .

"*Article 95. Manual and non-manual workers' right to form trade unions*

"The right of manual and non-manual workers to form trade unions is guaranteed by the Constitution of the USSR."

. . .

"*Article 97. Right of manual and non-manual workers to participate in the management of production*

"Manual and non-manual workers shall have the right to participate in discussing and taking decisions on questions concerning the expansion of production, to submit proposals concerning the improvement of work in undertakings, establishments, institutions and organizations and concerning the provision of social and cultural services and communal facilities."

. . .

"*Article 99. Additional guarantees to elected trade union officers*

"A manual or non-manual worker who is elected to a works, local or shop committee of a trade union and continues to carry on his principal employment in production shall not be transferred to another post or have any disciplinary sanction imposed on him without the prior consent of the works or local committee, or without the prior consent of a higher trade union body if he is the chairman of such a committee or a trade union organizer.

"The chairmen and members of works or local committees of trade unions who continue to work in their principal post in production may be dismissed by the management only if (in addition to observance of the general rules respecting dismissal) the consent of a higher trade union body has been obtained. Trade union organizers may be dismissed by the management only with the consent of a higher trade union body."

. . .

"*Article 101. Guaranteed social security benefits*

"Manual and non-manual workers and, where applicable, the members of their families, shall be provided with the following state social security benefits:

"(1) Temporary disability allowance and maternity allowance;

"(2) Birth grant and burial grant;

"(3) Old-age and disability pensions; pensions for loss of breadwinner; and length-of-service pensions (in the case of certain categories of workers)."

. . .

By a decree of the Presidium of the Supreme Soviet of the USSR, *On Increasing the Minimum Tax Exemption on the Income of Citizens in the Handicraft Industry*, dated 19 January 1970, the minimum tax exemption on the income derived by citizens from the handicraft industry was increased to 720 roubles per annum (paragraph 1). The existing rates of income tax levied on the income derived by citizens from the handicraft industry were reduced by an average of 15.3 per cent (paragraph 2).[3]

A decree of the Presidium of the Supreme Soviet of the USSR, of 24 February 1970, *On Additional Privileges in respect of the Agricultural Tax*[4] provides that:

"The farms of servicemen who were invalided as a result of wounds, shell-shock or mutilation suffered in the defence of the Soviet Union or other military service, or as a result of illness connected with service at the front, shall be exempt from payment of the agricultural tax from the time when the invalids reach the age of 55 years in the case of men, or 50 years in the case of women, provided that other members of their family who are capable of work do not personally participate in working the farm.

"Subject to the same conditions, the farms of invalided former wartime underground fighters and the farms of other invalids who are entitled, under the relevant legislation, to the same pension coverage as the above categories of servicemen shall be exempt from payment of the agricultural tax."

. . .

[3] *Ibid.*, No. 3, item 24.

[4] *Ibid.*, No. 9, item 81.

A decree of the Presidium of the Supreme Soviet of the USSR, of 31 August 1970, *On Amendments to Articles 22 and 36 of the Principles of Criminal Procedure of the USSR and the Union Republics,* provides that:

"1. Further extension of the participation of defence counsel in criminal proceedings is desirable.

"Accordingly, article 22 of the Principles of Criminal Procedure of the USSR and the Union Republics (*Vedomosti Verkhovnogo Soveta SSSR,* 1959, No. 1, item 15) shall be revised to read:

"*Article 22. Participation by defence counsel in criminal proceedings*

"Defence counsel shall be permitted to participate in the case as soon as the accused has been informed of the completion of the preliminary investigation and all the proceedings of the case have been communicated to him for his information. Subject to the decision of the procurator, defence counsel may be permitted to participate in the case as soon as the accusation has been presented.

"Participation by defence counsel in the preliminary investigation and in the court examination is obligatory in cases involving minors, deaf, dumb or blind persons and other persons who, as a result of their physical or mental disabilities cannot personally exercise their right to defence; and those involving persons who do not know the language in which the proceedings are conducted. In such cases, defence counsel shall be permitted to participate in the case as soon as the accusation has been presented.

"In cases involving persons accused of crimes for which the death penalty may be imposed, participation by defence counsel is obligatory as soon as the accused has been informed of the completion of the preliminary investigation and all the proceedings of the case have been communicated to him for his information.

"Participation by defence counsel in the case may also be obligatory in other cases specified in the legislation of the Union Republics.

"The following persons shall be permitted to serve as defence counsel: lawyers, representatives of trade unions and other social organizations, and other persons to whom this right is granted by the legislation of the Union Republics."

"2. In the interests of a more thorough preparation of the case for consideration by the court, article 36 of the Principles of Criminal Procedure of the USSR and the Union Republics shall be amended to read:

"*Article 36. Committal for trial*

"If there exist sufficient grounds to consider a case in judicial session, the judge shall, without prejudging the question of guilt, issue an order to commit the accused for trial.

"In cases involving offences committed by minors or offences for which the death penalty may be imposed, and also in cases in which the judge disagrees with the implications of the indictment, or in which it is necessary to change the preventive restriction imposed on the accused, a preliminary session of the court shall be held.

"At its preliminary session, the court shall issue an order to commit the accused for trial, or shall return the case for supplementary investigation, or shall terminate the case procedurally, and shall also resolve the matter of preventive restriction. If the accused is to be committed for trial, the court may, at its preliminary session, exclude certain charges from the indictment or apply a criminal law relating to a less serious offence without rewording the charges."

"3. The Presidiums of the Supreme Soviets of the Union Republics shall amend the Codes of Criminal Procedure of the Union Republics in accordance with the present Decree."

On 27 February 1970, the Council of Ministers of the USSR adopted a decision *On privileges and preferences for workers discharged as a result of improvements and economies in management.*[5]

Workers transferred from management direct to production who have no production skills shall, during their training in courses and at schools preparing workers for production work, and also during individual or group training and refresher courses, be entitled to the average remuneration which they received at their former place of work, for a period not exceeding three months; discharged workers shall retain an uninterrupted work record if the interruption in their work does not exceed three months, excluding the time of travel to the new place of work;

Workers transferred to work in other localities shall receive a lump-sum grant equal to two monthly salary payments, and workers transferred to work in areas of the Far North, in localities considered equivalent to areas of the Far North or in areas of the Urals, Siberia, the Far East and Kazakhstan shall receive a grant equal to three monthly salary payments. Each member of the worker's family transferring his residence shall receive a lump-sum grant equal to one quarter of the grant paid to the worker; in addition, the cost of travel to the new place of work by the worker and the members of his family, and the removal costs for their property, shall be reimbursed. During the period of travel to the new place of work, the worker shall be paid his salary and a *per diem* allowance;

Workers transferred to new work as a result of improvements and economies in management shall be granted regular leave during 1970 irrespective of the period of work completed at the new place of work.

By a decision of 3 September 1970, *On privileges and preferences for workers discharged as a*

[5] *SP SSSR,* 1970, No. 4, item 30.

result of measures to improve the organization of management in sectors of the national economy,[6] the Council of Ministers of the USSR extended all the privileges and preferences provided for in the decision of the Council of Ministers of the USSR dated 27 February 1970 to all workers "discharged from management as a result of measures to improve the organization of management in industry and other sectors of the national economy . . .".

On August 1970 the Council of Ministers of the USSR approved a *Regulation concerning the procedure for awarding and paying grants to pregnant women, mothers with many children and single mothers:*[7]

"1. State grants shall be awarded and paid to mothers with two children at the time of the birth of the third child and each subsequent child.

". . .

"6. Where the mother is unable, for health or other reasons, to complete the documents necessary for obtaining a State grant, the grant to which she is entitled shall be awarded to the children's father or guardian at his request and shall be paid to him until the reason preventing the mother from receiving the grant has been removed.

"Where a mother of many children dies, the grant to which she is entitled shall be awarded and paid to the children's father or guardian at his request.

"The father or the children of a deceased mother of many children shall receive the grant irrespective of whether the children have been adopted by his second wife in a registered marriage.

"7. The State grant shall be awarded and paid to the mother (father, guardian) whether or not a pension or maintenance payments are received in respect of the children.

"8. State grants are awarded and paid to single (unmarried) mothers for the maintenance and education of their children if the child's birth certificate does not contain an entry concerning the child's father or if an entry concerning the child's father has been made in accordance with the established procedure at the mother's request.

". . .

"10. The State grant provided for in the case of single mothers shall be awarded to previously married women in respect of children fathered by another man and born before or after the dissolution of the marriage or the death or disappearance of the husband if the child's birth certificate does not include an entry concerning the child's father or if an entry concerning the child's father has been made in accordance with the established procedure at the mother's request.

"11. If a single mother marries, she shall retain the right to receive any State grant already awarded and also the right to the award of a grant in respect of children born before her marriage.

"12. The State grant for single mothers shall be awarded and paid to single mothers with three or more children whether or not they receive the grant for mothers of many children.

"13. The State grant for single mothers shall not be awarded or paid if the mother receives a pension or maintenance payments in respect of the child, if the person who fathered the child has been recognized in accordance with the established procedure as the child's father or if the child has been adopted.

"14. A woman who has children fathered by a person with whom she has not been and is not registered as married, but with whom she is living, sharing a household and jointly bringing up the children, does not have a right to receive the State grant for single mothers. If such a woman enters into a registered marriage with the person who has fathered her children, no grant shall be awarded or paid in respect of the children fathered by that person.

"15. If the bringing up of the children of a single mother is transferred in accordance with the established procedure to a guardian (as a result of the death or illness of the mother of for other reasons), the prescribed State grant in respect of the children shall be awarded and paid to the guardian.

"The grant shall be awarded and paid to the guardian whether or not the children have been granted a pension by reason of their mother's death.

"16. If an unmarried woman is registered in the register of births as the mother of a child adopted by her, the State grant shall be awarded to her, as a single mother, in the normal way, but no earlier than in the month in which she was registered as the mother.

". . .

"24. A decision of the Commission on the Awarding of State Grants to Mothers of Many Children and Single Mothers may be contested in the executive committee of the district (municipal) Council of Workers' Deputies, which must examine the complaint within two weeks.

". . .

"39. Each female manual, non-manual and collective-farm worker who is pregnant shall be granted 112 calendar days of maternity leave, 56 days before and 56 days after childbirth.

"If the birth is difficult, or if two or more children are born, 70 calendar days of leave shall be granted after childbirth.

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[6] *Ibid.*, No. 16, item 127.

[7] *Ibid.*, No. 15, item 123.

"Women adopting new-born children directly from the maternity home shall be granted leave from the day of adoption until 56 days after the day of the birth of the child.

"40. For the period of maternity leave, the female manual, non-manual or collective-farm worker shall be awarded a grant in the amount and manner prescribed in the relevant legislation.

"41. Where a woman who is a young specialist assigned to work upon completion of her higher or secondary specialized education, or after completion of post-graduate work is granted maternity leave before she begins her work, the maternity grant shall be awarded as from the date on which she was to report to work.

"42. Upon the birth of a child, the mother or father, if employed as a manual or non-manual worker, shall be awarded from State social security funds a lump-sum grant of 12 roubles for the purchase of a layette and a grant of 18 roubles to feed the child. The above grants shall be awarded if the child's mother or father has worked continuously at the same undertaking (establishment, organization) for not less than three months prior to the date of the child's birth and if the earnings of the parent who has applied for a grant do not exceed 60 roubles per month.

"Upon the birth of two or more children, the above grants shall be awarded in respect of each child."

By a decision of 9 October 1970, *On partial changes in the conditions for accepting young people for study at higher and secondary specialized agricultural educational institutions with payment of their grants by kolkhozes, sovkhozes and other State agricultural undertakings,*[8] the Council of Ministers of the USSR provided "that study at higher and secondary specialized agricultural educational institutions with payment of grants by kolkhozes, sovkhozes and other State agricultural undertakings in accordance with the procedure laid down in this decision shall be open to persons whether or not they have completed a period of training in practical work".

[8] *Ibid.*, No. 19, item 149.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE*

Article 2 of the Universal Declaration of Human Rights

Report of the Community Relations Commission

The report, published in June, gives details of increased activity at national and local level to promote good race relations. It said that the spread of information and knowledge and the deepening awareness among the public generally brought a greater degree of tolerance and understanding in the year under review. The Government grant to the Commission was increased from £300,000 in 1969-70 to £395,000 in 1970-71.

Report of Race Relations Board

The report of the Race Relations Board was published in June. The Board's statutory function is to secure compliance with the Race Relations Act 1968 which makes it unlawful to discriminate on grounds of colour, race or ethnic or national origins in the provision of goods, facilities or services and in employment and housing. In the year ended March 1970 the Board and its local conciliation committees investigated 982 complaints of discrimination. In 734 cases they formed the opinion that no discrimination had occurred and in 248 cases they were of the opinion that it had. In all but two of these cases satisfactory assurances against further acts of discrimination had occurred.

Race Relations Act extended

In November a large number of small firms, boarding houses and lodging houses which were previously excepted from the provisions of the Act came within its scope for the first time.

Race relations in industry

The Department of Employment and Productivity (now Department of Employment) strengthened its advisory service on race relations by increasing its staff of employment advisers from 4 to 11. Working in conjunction with employers' associations, trade unions and other bodies they seek to develop the department's policy of promoting equal opportunity in employment.

Article 8 of the Universal Declaration

United Kingdom Parliamentary Commissioner's Report

The second report of the United Kingdom Parliamentary Commissioner, who has powers to investigate complaints of maladministration by United Kingdom Government departments, showed that fewer than one-fifth of the cases which warranted full investigation disclosed elements of maladministration which had led to some measure of injustice. Of the 302 cases which he investigated fully, elements of maladministration were found in 48 cases, of which 26 concerned the Inland Revenue. The Commissioner's further investigations into the Inland Revenue showed that the maladministration was not of a culpable nature, but consisted mainly of errors and delays attributable to pressure of work.

Report of Northern Ireland Commissioner of Complaints

A report on the work of his office since its opening in December 1969 up to October 1970 was published by the Northern Ireland Commissioner of Complaints. The Commissioner, wholly independent of the Government, was appointed to deal with complaints of injustices suffered as a result of maladministration by certain local or public bodies, including all local authorities and New Towns Commissions, and such bodies as the Electricity Board for Northern Ireland, the Northern Ireland General Health Services Board, the Northern Ireland Hospitals Authority, hospital management committee and the Northern Ireland Housing Trust. All investigations are conducted in private, the Commissioner having High Court powers regarding the attendance and examination of witnesses and the

* Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

production of documents. The appointment of a Commissioner of Complaints is additional to that of the Parliamentary Commissioner who investigates complaints against government departments.

The Commissioner stated in his report that out of the 970 complaints received, only 74 involved allegations of sectarian discrimination; 21 of the latter were outside his jurisdiction and 43 were still under investigation. Of the 158 cases so far investigated, there had been formal findings of maladministration in only six. Investigation had, however, been completed in six other cases, in which findings of maladministration would be made in reports shortly to be issued, giving an effective total so far of 12 findings of maladministration. Only in two of theses cases was sectarian discrimination alleged, and the Commissioner had found that there was no substance in that part of the complaints in either case.

Article 12 of the Universal Declaration

Right of privacy

The Government set up a committee to consider whether legislation was needed to give further protection to the individual citizen and to commercial and industrial interests against intrusions into privacy by private people and organizations or by companies, and to make recommendations. The committee comprises not only lawyers but also Members of Parliament and representatives of the Press, broadcasting, business, and the trade unions.

Article 13 of the Universal Declaration

IMMIGRATION

Immigration appeals

The first stage of the system of appeals provided for in the Immigration Appeals Act 1969 against decisions taken in the administration of immigration control began on 1 July 1970. The following groups of people have the right of appeal: Commonwealth citizens who have been refused entry certificates overseas; aliens who are refused visas; people who object to a variation in their conditions of admission or whose applications for revocation or variation in their conditions of admission have been refused; and people who are to be deported without the recommendation of a court. Rights of appeal for most passengers refused entry at seaports and airports were introduced later in the year.

The statutory rights of appeal available from 1 July against refusals of entry certificates or visas were expected to cover about 16,000 decisions a year, or 70 per cent of the decisions which would eventually be subject to appeal.

Immigrants' Advisory Service

A group of organizations co-operated to establish an advisory and welfare service for immigrants, known as the United Kingdom Immigrants' Advisory Service. The service has headquarters in London and offices at the main ports as well as in centres of immigrant settlement. Its function is to advise Commonwealth citizens and aliens on exercising their right of appeal and to deal with any welfare problems arising from such cases. If an appellant, including anyone who has unsuccessfully applied for an entry certificate or visa overseas, seeks the help of the service in presenting his appeal, it represents the appellant or assists a relative or friend to present his case on his behalf. The governing body of the service is an executive council consisting of one member nominated by each of 14 organizations, which include the Community Relations Commission, the British Council of Churches, the National Council of Social Service, the National Council of Civil Liberties, the Committee on United Kingdom Citizenship, and West Indian, Pakistani and Indian associations.

Article 16 of the Universal Declaration

Administration of Justice Act 1970 – Family Division of the High Court

The Act provides for the establishment of a Family Division of the High Court to deal with family, domestic and matrimonial business. In the debates on the Bill, the Attorney General said the creation of the new division recognized the importance of the family and the need to ensure that any disputes arising within a family would be dealt with in a sympathetic atmosphere by judges and officials with the necessary experience and understanding; the concentration within a single division of business relating to the family would enable attention to be paid more easily to the important welfare aspect of this work.

Adoption of children

The principle that the long-term welfare of the child should be the first and paramount consideration in the application of adoption law underlies the proposals contained in the working paper of the Departmental Committee on the Adoption of Children published in October. Public discussion and comment were invited on its provisional proposals for changes in the law and when reactions to these have been studied the committee will publish a final report.

Matrimonial Proceedings and Property Act 1970

The Act provides safeguards against financial and other hardship for any members of a family following the irretrievable breakdown of a marriage. It gives the courts wider powers than before over the financial provisions for husbands, wives and children, and establishes for the first time the principle that financial remedies on the breakdown

of a marriage are to operate in the interests of husbands and wives equally.

Article 21 of the Universal Declaration

Reorganization of local government in Northern Ireland

In October Mr Brian Faulkner, then Northern Ireland's Minister of Development, presented for discussion to the Northern Ireland Parliament, the report of a review body on the reorganization of local government which he said he regarded as an outstanding contribution to the process of modernisation of Northern Ireland's administrative system. While the Government was entering the debate without commitment to the report, and was anxious and willing to consider and weigh up all other points of view, his present attitude was that those other points of view would have to be both convincing and single-minded if they were to add up to a more promising framework than that offered by the report.

The proposals in the report would involve the transfer of important services such as education, planning, roads, personal health services, water supply and sewerage from local government to ministries of the Northern Ireland Government, and the replacement of the existing 73 local authorities by a maximum of 26 new district councils. The district councils would retain responsibility for localised services such as refuse collection, litter control, parks and open spaces, museums and art galleries, and environmental health services, and they would act as agents for the Government in carrying out some executive functions for the major services to be transferred.

Women's National Commission

The Prime Minister announced the reconvening of the Women's National Commission to ensure by all possible means that the informed opinion of women was given its due weight in the deliberations of Government on matters of public interest.

Article 23 of the Universal Declaration

Equal Pay Act 1970

This Act is intended to eliminate by the end of 1975 discrimination in Great Britain between men and women contained in terms and conditions of employment. Where men and women do the same or broadly similar work for the same or related employer, or where they do different jobs recognized by job evaluation schemes as equivalent, women will qualify for equal pay. The Act also removes the effects of any obvious discrimination there may have been in the actual process of job evaluation. Where terms and conditions of employment are laid down in collective agreements, statutory wage orders or employers' pay structures, rates of pay applying specifically to men only or to women only must be eliminated, if necessary by declarations of the Industrial Court: the Court may declare that men's and women's rates attaching to any single class of work are to be made the same and that any rate applying specifically to women should be raised to the level of the lowest men's rate in the agreement. Similar legislation was passed in 1970 for Northern Ireland.

Local Employment Act 1970

The main purpose of this Act was to extend to a new category of area — the intermediate areas — some of the incentives to industrial investment already available in the development areas under earlier Local Employment Acts. In addition the Act empowered the Government to make grants to local authorities in other parts of the country towards the cost of acquiring and improving derelict land where this was likely to contribute to the development of industry in the locality.

Article 25 of the Universal Declaration

Local Authority Social Services Act 1970

This Act provides for the unification of the personal social services administered by local authorities in England and Wales (following an earlier measure for Scotland). It requires each local authority to establish a social services committee to be headed by a director of social services with the object of providing a unified service capable of dealing with all aspects of family welfare that are the concern of the local authorities. Among the advantages of the new organization are that it will make the services more accessible to the public, allow greater flexibility in meeting their needs, remover uncertainties about where responsibility lies for providing help and make more effective use of manpower and training facilities for social workers.

Chronically Sick and Disabled Persons Act 1970

The Act is intended "to increase the welfare, improve the status and enhance the dignity of the chronically sick and of disabled persons". It extends and strengthens existing legislation and contains a large number of provisions covering health and welfare services, housing, access to public buildings, vehicles and representation on government advisory committees.

Urban Programme

A four years' extension to the urban programme (under which additional resources are allocated to areas of special social need) was announced in May. Further expenditure of £40 million will bring the total for the period of 1968-1976 to £60-65

million. Projects approved under the second phase of the scheme, which attract Exchequer grants of 75 per cent, include holiday language schemes for immigrants, play-groups, adventure playgrounds and family advice centres.

Social Security

Under the National Insurance Act 1970 pensions were awarded in November to elderly people (men aged 87 and over and women aged 82 and over) who were over pension age in 1948 and were therefore excluded from the national insurance scheme when is started. The Act also provided for two other benefits which will become payable in 1971: a pension for women who were between 40 and 50 when their husbands died or when widowed mother's allowance ceased to be payable (50 was previously the minimum age, though women under 50 with children were eligible for widowed mother's allowance); and an attendance allowance for severely disabled people in need of continual supervision.

The Family Income Supplements Act 1970 provides for a new benefit for families with small incomes where the wage-earner is in full-time work and there are dependent children.

HOUSING

Changes in Housing Finance

The Government proposed a strategy of reform of housing finance, in November, about which it is consulting local authorities and other interested parties.

The fair rent system introduced by the previous Government, generally recognized as an equitable basis of determining rent structures, would be extended within the private sector. This would prevent thousands of dwellings from sinking into decay and encourage the improvement and repair of these properties. At the same time, the fair rent principle would be applied to local authority dwellings in England and Wales over a period, with a limit to the average rent increase in any one year. Proposals having a broadly similar effect would be made for Scotland.

To ensure that tenants were not prevented from occupying accommodation suited to their needs through inability to afford the rent, the Government would introduce a comprehensive system of rent rebates and allowances for all of those in need. Any tenant of unfurnished accommodation who could not afford to meet the full new rent would be able to obtain financial help which would have proper regard to his income and family commitments. Formerly, rent rebates were available only to council tenants in those areas where councils operated a rebate scheme, but under Government proposals rent rebates would be available for the tenants of all local authorities.

The Government would take special steps to relieve the high cost of slum clearance. Also, for those areas where there was serious overcrowding, it was the Government's intention to give special assistance to those authorities who needed it to meet the high cost of tackling the related problems of over-crowding and obsolescence. It was continuing a major drive for the improvement and rehabilitation of older houses, bringing the full weight of government assistance to bear on the worst areas of the housing problem.

IMPROVEMENT OF THE ENVIRONMENT

Prevention of environmental pollution

A standing Royal Commission on Environmental Pollution was set up in February to advise on matters, both national and international, concerning the pollution of the environment; on the adequacy of research in this field; and the future possibilities of danger to the environment.

In October a reorganization of central government included the creation of a new Department of the Environment responsible for the whole range of functions affecting the physical environment in which people live and work.

TOWN PLANNING

A new city – Milton Keynes Development Plan

The plan for the future development of the new city of Milton Keynes was announced. Milton Keynes was designated in 1967 under the New Towns Act 1965, principally to provide housing and employment for people living in congested conditions in the London areas; some 150,000 people are expected to move into the new city by the mid-1990s, bringing its total population to 250,000. The plan, which presents detailed proposals for the first 10 years of the city's growth, is based on six broad concepts: opportunity and freedom of choice; easy movement and access and good communications; balance and variety; an attractive city; public awareness and participation; and efficient and imaginative use of resources. The capital cost of building Milton Keynes – estimated at £700 million – will be shared by the (publicly appointed and financed) development corporation for the city, the local and public authorities and the private sector.

Sites for gypsies

Part II of the Caravan Sites Act 1968 was brought into effect on 1 April, obliging local authorities to provide adequate accommodation for gypsies residing in or resorting to their areas.

General

TREATMENT OF OFFENDERS

Attachment of earnings

The Administration of Justice Act 1970 replaces the courts' power to imprison for debt by

an extension of its power to attach earnings against any judgement debtor in respect of wages or salary. The Attorney General gave an estimate that this would keep out of prison at least 2,750 people a year.

Developments in penal policy

Among developments in penal policy announced by the Parliamentary Under-Secretary of State, Home Office, in November were:

An expansion of the probation and after-care service; an extension of the parole board system (under which all prisoners serving fixed sentences become eligible for parole after serving one-third of their sentence, subject to a minimum of one year) – panels of the Parole Board were to be set up in Birmingham and Manchester and the possibility of extending the scheme itself was being considered; relaxation in the censorship of prisoners' mail – as an open prison; prisoners would be allowed to send out letters sealed, and their incoming mail would be opened in their presence to see if it contained contraband, but it would not be read;

Extension of the home leave scheme – this scheme, under which prisoners serving sentences of five years or more may be given leave towards the end of their sentences, would be extended to prisoners in the ordinary class serving three years or more (all prisoners serving fixed sentences of two years or more in the 'star' class in local prisons were already eligible for this terminal leave);

In May the Joint Under-Secretary of State, Home Office, announced that penal establishments for women and girls were being reorganized to provide additional facilities for the medical, psychiatric and remedial treatment of which most of the relatively small number received into custody – fewer than 1,000 a year – were in need.

UNITED REPUBLIC OF TANZANIA

THE NATIONAL SECURITY ACT, 1970

Act No. 3 of 1970, assented to and entered into force on 30 March 1970[1]

3. Any person who, for any purpose prejudicial to the safety or interests of the United Republic:

(a) Approaches, inspects, passes over, is in the vicinity of or enters any protected place;

(b) Makes any sketch, plan, model, or note or in any manner whatsoever makes a record of or relating to any thing which might be or is intended to be directly or indirectly useful to a foreign power or disaffected person;

(c) Obtains, collects, records, publishes or communicates to any person any code, password, sketch, plan, model, note or other document, article or information which might be or is intended to be directly or indirectly useful to a foreign power or disaffected person;

(d) Without lawful excuse damages, hinders or interferes with, or does any act which is likely to damage, hinder or interfere with, any necessary service or the carrying on thereof,

shall be guilty of an offence and liable on conviction to imprisonment for life.

4. [Deals with the possession and communication of certain information]

...

13. (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 authorizing 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 authorized by such named police officer, at any time to enter any premises, place, aircraft, ship, boat, train or other vehicle as the case may be, named or described in the warrant, if necessary by force, and to search the same and every person, or receptacle 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 connexion with which he has reasonable grounds for suspecting that an offence has been or is about to be committed.

...

18. (1) Where it appears to the Minister 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 United 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, and to allow the person so named to take copies or abstracts from all or any such originals, transcripts or papers.

...

19. Notwithstanding any written law to the contrary no person charged with an offence under this Act shall be admitted to bail, either pending trial or pending appeal, if the Director of Public Prosecutions certifies in writing that it is likely that the safety or interests of the United Republic would thereby be prejudiced.

20. (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 United Republic.

(2) Where an offence under this Act has been committed outside Tanganyika:

(a) If the offence is triable by the High Court, the High Court shall have jurisdiction to try the person charged;

(b) In any other case, the person charged may be tried either by the High Court or by such court of a resident magistrate as the Chief Justice may direct.

[1] *Acts Supplement to the Gazette of the United Republic of Tanzania*, No. 13, Vol. LI, of 27 March 1970.

THE UNIVERSITY OF DAR ES SALAAM ACT, 1970

Act No. 12 of 1970, assented to on 18 June 1970 and entered into force on 1 July 1970[2]

PART II

The University of Dar es Salaam

3. (1) There is hereby established a University to be known as the University of Dar es Salaam.

...

4. The objects and functions of the University shall be:

(a) To preserve, transmit and enhance knowledge for the benefit of the people of Tanzania in accordance with the principles of socialism accepted by the people of Tanzania;

(b) To create a sense of public responsibility in the educated and to promote respect for learning and pursuit of truth;

(c) To prepare students to work with the people of Tanzania for the benefit of the nation;

(d) To assume responsibility for University education within the United Republic and to make provision for places and centres of learning, education, training and research;

(e) To co-operate with the Government of the United Republic and the people of Tanzania in the planned and orderly development of education in the United Republic;

(f) To stimulate and promote intellectual and cultural development of the United Republic for the benefit of the people of Tanzania;

(g) To conduct examinations for, and to grant, degrees, diplomas, certificates and other awards of the University.

...

[2] *Ibid.*, No. 25, Vol. LI, of 19 June 1970.

THE AGE OF MAJORITY (CITIZENSHIP LAWS) ACT, 1970

Act No. 4 of 1970, assented to and entered into force on 25 July 1970[3]

2. In this Act unless the context otherwise requires:

"citizenship laws" means the Citizenship Ordinance and the Citizenship Act, 1961.

3. (1) The citizenship laws are hereby amended by deleting the words "the age of twenty-one years", "twenty-one years of age" and "the age of 21 years" wheresoever they occur in the said laws (including where they occur in any of the Schedules to those laws), and substituting therefor in each case the words "the age of eighteen years".

...

(3) The Citizenship Ordinance is amended in section 2 by adding the following subsection immediately below subsection (6):

"(7) In this Ordinance references to the Constitution shall be construed as references to the Citizenship Act, 1961."

(4) Section 6 of the Citizenship Act, 1961 is amended in subsection (6):

(a) By deleting the words "the age of twenty-two years" where they occur in the second line and where they again occur in the sixth and seventh lines of paragraph *(a)* and substituting therefor in each case the words "the age of nineteen years";

...

4. (1) Where by virtue of the amendments made to the citizenship laws by this Act, any person who has attained the age of eighteen years before the coming into operation of this Act but has not, on the date on which this Act comes into operation, attained the age of twenty-one years, and who has ceased or will cease to be a citizen of the United Republic by reason of his having failed to do or by reason of his failing to do any act or thing before the expiration of the time within which such act or thing is required to be done by the citizenship laws, such person shall, notwithstanding the provisions of the citizenship laws as amended by this Act, be deemed not to have

[3] *Ibid.*, No. 31, Vol. LI, of 25 July 1970.

ceased to be a citizen of the United Republic or, as the case may be, shall not cease to be a citizen of the United Republic, by reason only of his having failed or of failing to do any such act or thing within such time if such act or thing is done before the first day of July, 1971 or before such person attains the age of nineteen years, whichever is the latter.

(2) Where any such person attains the age of twenty-one years on, or at any time within twelve months after, the date on which this Act comes into operation, or where any such person attained the age of twenty-one years at any time within twelve months immediately preceding the date on which this Act comes into operation, the citizenship laws shall have effect in relation to such persons as if the provisions of subsection (1) of section 3 and the provisions of paragraph *(a)* of subsection (4) of section 3 of this Act had not been amended.

THE ELECTIONS ACT, 1970

Act No. 25 of 1970, assented to on 25 July 1970[4]

CHAPTER II

Registration of voters

PART 1

Qualifications and disqualifications for registering as voters and voting

13. Every citizen of Tanzania who has attained the age of 18 years shall, unless he is disqualified by this or any other Act, be entitled to be registered under and in accordance with the provisions of this Act as a voter.

14. [Deals with disqualifications for registration]

PART 2

Registration

...

25. Where a Registration Officer refuses an application under the foregoing provisions of this Part, he shall, if so required by the applicant, give to the applicant a written statement in the prescribed form setting out the grounds of his refusal, and any applicant aggrieved by such refusal may, within 21 days after receipt by him of such statement, appeal against such refusal to a resident magistrate.

PART 3

Objections to registration or continued registration

...

31. If any objector or person in regard to whom objection has been made is dissatisfied with the decision of the Registration Officer . . . he may, within 20 days from the date of such decision appeal therefrom to a resident magistrate.

PART 4

Appeal and addition to or deletions from the register

32. (1) Every appeal under section 25 or 31 shall state shortly the grounds of appeal, and shall be accompanied by the sum of 20 shillings as a deposit.

(2) The resident magistrate shall hear every such appeal in public giving notice of the time, date and place of the hearing of the appeal to the parties concerned. It shall be in his discretion whether to hear or not to hear any evidence. His determination of the appeal shall be final and conclusive and shall not be called in question in any court.

...

CHAPTER III

Presidential elections

PART 1

General

...

37. (1) Every person registered as a voter under this Act shall be entitled to vote at a Presidential election.

...

PART 3

Special provisions relating to the holding of Presidential elections in Zanzibar

41. The provisions of this Chapter shall apply in relation to the holding and conduct of a Presidential election in Zanzibar in the same manner and, subject to the provisions of this Part, to the same extent as they apply in relation to the holding and conduct of a Presidential election in Tanganyika.

42. The Electoral Commission shall appoint a person who, at the time of his appointment, is ordinarily resident in Zanzibar, to be the Supervisor of Elections in Zanzibar; and the registration

[4] *Ibid.*

of voters and the conduct of a ballot in Zanzibar for the purposes of Presidential elections shall, subject to the direction and supervision of the Electoral Commission, be conducted under the charge of such Supervisor of Elections.

CHAPTER IV

Parliamentary and local authority elections

PART 1

Qualification of candidates

46. No person shall be qualified to be elected as a constituency member unless he is qualified to be so elected by and in accordance with the provisions of the Constitution.

47. Any citizen of the United Republic who has attained the age of 21 years and is a member of the Party[5] shall, if he is ordinarily resident within the area of jurisdiction of the local authority for which the election is to be held and unless he is disqualified under section 48, be qualified for election as a member of the local authority, and no other person shall be so qualified.

48. [Deals with disqualification for election to local authority.]

PART 7

The election campaign

66. (1) Where there is a contested election in a constituency or a ward:

(a) The election campaign on behalf of both the candidates shall be organized by, and the candidates shall be presented to the electorate at meetings convened for the purpose by:

(i) In the case of a parliamentary election, the District Executive Committee of the Party;

(ii) In the case of the local authority election, the Branch Executive Committee of the Party;

(b) No candidate at such election nor any person acting on his behalf (whether or not such person is acting with the approval or consent of the candidate), shall convene or address any public meeting in the constituency or, as the case may be, the ward for the purpose of furthering the candidate's election, other than a meeting held by or under the auspices of the District Executive Committee or, as the case may be, the Branch Executive Committee and no candidate or any such other person shall undertake any public or door-to-door canvassing save as may be permitted by the District Executive Committee or, as the case may be, the Branch Executive Committee.

(2) In the case of a parliamentary election, the District Executive Committee shall draw up a programme of meetings for every constituency situated within its district in which there is a contested election, and shall specify in such programme the time and place of each meeting, the person who shall take the chair thereat and the order of speaking (alternating at successive meetings) of the candidates.

(3) In the case of a local authority election, the Branch Executive Committee shall draw up a programme of meetings for every ward situated within its jurisdiction in which there is a contested election, and shall specify in such programme the time and place of each meeting, the person who shall take the chair thereat and the order of speaking (alternating at successive meetings) of the candidates.

(4) Every programme drawn up in accordance with subsection (2) or subsection (3) shall be subject to the approval of the supervisory delegates upon their appointment, and it shall be lawful for the supervisory delegates to suggest such alterations and modifications in the programme as they may consider fit.

(5) In the organization and conduct of the election campaign the members of the District Executive Committee or, as the case may be, the Branch Executive Committee, shall accord a fair and equal opportunity to each of the candidates.

...

69. (1) Every candidate shall be responsible for his personal expenses during an election.

...

CHAPTER V

Election and voting procedure

PART 1

Election procedure

...

75. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he voted . . .

CHAPTER VI

Offences

...

PART 2

Other election offences

...

108. (1) Every officer, clerk, interpreter, candidate and agent authorized to attend at a polling station or at the counting of votes, shall, unless he has taken an oath of secrecy under the foregoing provisions of this Act, before so attending, take an oath of secrecy in the prescribed form.

...

[5] As indicated in section 2, "the Party" means the Party the constitution of which is for the time being set out in the First Schedule to the Constitution.

109. Every person who is guilty of bribery, treating or undue influence shall be guilty of a corrupt practice and shall be liable on conviction to a fine not exceeding 10,000 shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

110. Every person who is guilty of personation or of aiding, abetting, counselling or procuring the commission of the offence of personation, shall be guilty of a corrupt practice and shall be liable on conviction to a fine not exceeding 5,000 shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

...

CHAPTER VII

Avoidance of elections and election petitions

123. (1) The election of a candidate as a member shall not be questioned save on an election petition.

...

CHAPTER VIII

Procedure and jurisdiction of Courts

125. (1) Every election petition shall be tried by the High Court.

...

126. An election petition may be presented by any one or more of the following persons, namely:

(a) A person who lawfully voted or had a right to vote at the election to which the petition relates;

(b) A person claiming to have had a right to be nominated or elected at such election;

(c) A person alleging himself to have been a candidate at such election;

(d) The Attorney-General.

...

THE PERMANENT LABOUR TRIBUNAL (AMENDMENT) ACT, 1967

Act No. 31 of 1970, assented to and entered into force on 25 July 1970[6]

2. The Permanent Labour Tribunal Act, 1967 is amended by adding immediately below section 40 the following section:

40A. (1) Any employer who:

(a) On request made therefor by an officer of the Union or by the Labour Commissioner or by a labour officer, refuses, or fails within a reasonable time, to furnish the person making the request with any information necessary for negotiating an agreement respecting the wages and terms and conditions of employment of the employees employed by the employer;

(b) Does or omits to do any act or thing and it is proved to the satisfaction of the court that:

(i) The act or thing done or omitted to be done, was done or, as the case may be, omitted to be done with the intention to annoy the employees employed by the employer or to provoke such employees to go on strike; or

(ii) The act or thing done or omitted to be done was done or, as the case may be, omitted to be done in circumstances in which such act or omission might reasonably be expected to annoy the employees employed by the employer or to provoke such employees to go on strike,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 10,000 shillings or to imprisonment not exceeding a term of six months or to both such fine and imprisonment.

(2) No proceedings for an offence under this section shall be instituted save by, or with the consent of, the Director of Public Prosecutions.

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[6] *Ibid.*, For extracts from the Permanent Labour Tribunal Act, 1967, see *Yearbook on Human Rights for 1967*, pp. 355-357.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1970*

Introduction

Action to further the promotion and protection of human rights in the United States continued during the year 1970 at the federal, state and local levels of government. The basic individual guarantees provided in the Bill of Rights of the United States Constitution and in a broad range of federal and state legislation were implemented, interpreted and enforced through agencies of the federal and state executive branches as well as through the courts.

Civil Rights

Executive enforcement

In the field of civil rights, the important role played by the United States Department of Justice was highlighted in a two-year review issued by the Attorney General on 19 January 1971. This review records the fact that 94 cases were filed in the two-year period 1969-1970 in the area of education; the number of school districts sued jumped from a total of 56 in the two years, 1967-1968, to a total of 254 for the years 1969-1970 — a 350 per cent increase. The percentage of black school children in the 11 Southern states attending desegregated systems increased from less than 6 per cent prior to the opening of school in 1969 to 92 per cent at the opening of the 1970-1971 school year. In the field of housing, the implementation of a national fair housing programme as laid down by the Congress in 1968 led to the filing in the years 1969 and 1970, of 64 housing cases in 22 states and the District of Columbia. Negotiation resulted in securing the removal of racial discrimination from the policies of 19 United States title insurance companies. Similar progress was made through negotiation or litigation with multiple listing services, real estate brokers, apartment operators and large housing developers. The year 1970 also saw a significant increase in the number of cases brought to trial in the field of fair employment. These actions included many multi-defendant suits, such as one against 5 building trade unions and 3 joint apprenticeship committees in Seattle, the first of its kind; another state-wide suit against a power company; one against an ironworkers' local, resulting in the most comprehensive relief yet obtained in any trade union case. Through negotiation, with more than 80 potential defendants involved, the Department of Justice won an anti-discrimination agreement from the movie and television industry in Los Angeles. The Department of Justice also filed the first cases alleging discrimination against women, Mexican-Americans and Indians. In the year 1970 the Civil Rights Division of the Department of Justice established a Title VI Unit whose sole responsibility is to work with federal agencies in assuring non-discrimination in federally assisted or funded programmes. (Title VI refers to Title VI of the Civil Rights Act of 1964. Under this Title, no person in the United States shall, on the grounds of race, colour or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programme or activity receiving federal financial assistance.)

Significant legislation

Voting rights

On 22 June 1970, the "Voting Rights Act Amendments of 1970" was approved. This Act of the United States Congress (P.L. 91-285) extended the Voting Rights Act of 1965 in three principal respects. The 1970 amendments extended to other states not previously covered the prohibitions of the 1965 Act regarding the use of tests or devices as prerequisites for voting or registration. As employed in the Act, the terms "test or device" means "any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character or (4) prove his qualifications by the voucher of registered voters or members of any other class".

The 1970 Act also abolished durational residency requirements. The Congress found that the imposition and application of a durational resi-

* Note furnished by the Government of the United States of America.

dency requirement as a pre-condition to voting for the offices of President and Vice-President; and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections denied or abridged certain constitutionally guaranteed rights of United States citizens. In addition to abolishing the durational residency requirement, the Act provided for the establishment of nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

A third principal feature of the 1970 Act was its provision reducing the voting age to eighteen in federal, state and local elections. In providing for this reduction, the Congress made the following declaration and findings:

"*(a)* The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election –

"(1) Denies and abridges the inherent constitutional rights of citizens eighteen years but not yet twenty-one years of age to vote – a particularly unfair treatment of such citizens in view of the national defence responsibilities imposed upon such citizens;

"(2) Has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

"(3) Does not bear a reasonable relationship to any compelling State interest.

"*(b)* In order to secure the constitutional rights set forth in subsection *(a)*, the Congress declares that it is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over."

Education

In Public Law 91-230, approved 13 April 1970, the Congress provided for the extension of programmes of assistance for elementary and secondary education. In this law there was contained an important statement of policy with respect to the application of certain provisions of Federal law relating to conditions of segregation by race:

"*(a)* It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and section 182 of the Elementary and Secondary Education Amendments of 1966 dealing with conditions of segregation by race, whether *de jure* or *de facto*, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

"*(b)* Such uniformity refers to one policy applied uniformly to *de jure* segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to *de facto* segregation wherever found.

"*(c)* Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally-assisted programs and activities as required by title VI of the Civil Rights Act of 1964.

"*(d)* It is the sense of the Congress that the Department of Justice and the Department of Health, Education, and Welfare should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States."

Public Law 91-230 also contained new provisions for supplementary educational centres and services. The Commissioner of Education was directed to carry out a programme to stimulate and assist in the provision of vitally needed educational services not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school education programmes to serve as models for regular school programmes, and to assist the States in establishing and maintaining programmes of testing and guidance counseling. Title VI of the law, known as the Education of the Handicapped Act, provided for new programmes dealing with the education of handicapped children.

The administration of justice

A significant initiative to improve the functioning of the courts in the interest of assuring more efficient, speedier disposition of cases was taken by the Congress in the adoption on 29 July 1970 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (P.L. 91-358). The Act provided for a far-reaching reorganization of the court structure of the District of Columbia and for revised procedures for the handling of juveniles in the District. Many new judgeships were created to ease the very serious backlog of cases.

Representative government

Public Law 91-510, approved on 26 October 1970, known as the Legislative Reorganization Act of 1970, provided for a number of changes in the organization of the Legislative Branch of the Federal Government. The reorganization, which dealt particularly with the committee system and the system of fiscal control, was adopted to introduce needed improvements in the cohesive operation of the Congress.

Health

During 1970 the United States Congress adopted a large number of measures in the field of public health. The Community Mental Health Centers Amendments of 1970 (P.L. 91-211) extended and improved the existing programmes for

community mental health centres and facilities for the treatment of alcoholics and narcotic addicts. The 1970 Act also established programmes for the mental health of children. The Medical Library Assistance Extension Act of 1970 (P.L. 91-212) amended the Public Health Service Act to improve and extend provisions relating to assistance to medical libraries and related instrumentalities. Public Law 91-296 contained amendments to existing provisions of law providing for federal assistance in the construction and modernization of hospitals and other medical facilities. The Heart Disease, Cancer, Stroke and Kidney Disease Amendments of 1970 (P.L. 91-515) revised, extended and improved programmes of research, invistigation, education, training and demonstrations authorized under the Public Health Service Act. The Health Training Improvement Act of 1970 (P.L. 91-519) established the eligibility of new schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine and podiatry for institutional grants under the Public Health Service Act. The 1970 Act also extended and improved programmes relating to the training of personnel in the allied health professions. The Family Planning Services and Population Research Act of 1970 (P.L. 91-572) was approved on 24 December 1970. This Act had as its purpose the promotion of public health and welfare by expanding, improving and better co-ordinating the family planning services and public research activities of the Federal Government. The Occupational Safety and Health Act of 1970 (P.L. 91-596) constituted a major step at the federal level to assure safe and healthful working conditions for working men and women. The Act provided for the development of occupational safety and health standards and for their enforcement. The Act further provided for assistance and encouragement to the States in their efforts to assure safe and healthful working conditions. A comprehensive Federal programme for the prevention and treatment of alcohol abuse and alcoholism was established in the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, approved on 31 December 1970 (P.L. 91-616) Public Health protection relating to the hazards of cigarette smoking was further extended by the Public Health Cigarette Smoking Act of 1969 (P.L. 91-222), approved on 1 April 1970.

Judicial action — selected leading cases

Equal protection of the laws

Two cases decided by the Supreme Court in January 1970 involved allegations or racial discrimination in the selection of juries and school boards in two southern states. The case *Carter* v. *Jury Commission of Greene County* (396 U.S. 320) was brought by Negro citizens of Greene County, Alabama who alleged that Negroes had been systematically excluded from juries of that county. In a related case, *Turner* v. *Fouche* (396 U.S. 346), a group of Negro residents of Taliaferro County, Georgia brought an action to challenge the constitutionality of the statutory system used in many Georgia counties to select juries and school boards. In both cases the Supreme Court closely examined the State statutes in question as well as the procedures thereunder as carried out by State officials. The Court laid down guidelines to be followed by lower courts in determining the existence of discriminatory statutory provisions or procedures.

The case *Hadley* v. *Junior College District of Metropolitan Kansas City* (397 U.S. 50), decided in February 1970, involved the application of the "one man, one vote" principle to a local election for trustees of a junior college district. The "one man, one vote" principle is assured under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Supreme Court held that this guarantee applied to the local election in question. The Court noted that whenever a state or local government, by popular election, selects persons to perform public functions, the Constitution requires that each qualified voter have an equal opportunity to participate in the election. When members of an elected body are chosen from separate districts, each district must be established on a basis that as far as practicable will insure that an equal number of voters can vote for a proportionally equal number of officials.

Double jeopardy

The case of *Waller* v. *Florida* (397 U.S. 387), decided in April 1970, concerned the double jeopardy provision of the Fifth Amendment to the United States Constitution. The Fifth Amendment guarantees that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb". The case involved two trials based on the same acts, one by a municipal court and a subsequent proceeding by a state court. The Supreme Court held that the second trial for the identical offence for which the person concerned had been tried in a municipal court constituted double jeopardy. The Court noted that the State and its municipalities were not separate entities each entitled to impose punishment for the same alleged crime.

Freedom of religion

The case *Walz* v. the *Tax Commission of the City of New York* (397 U.S. 664), decided 4 May 1970, concerned the guarantee contained in the First Amendment to the United States Constitution which forbids Congress to make any law respecting an establishment of religion, or prohibiting the free exercise thereof. The case concerned property tax exemptions which had been granted by New York City to religious organizations for properties used solely for religious worship. The tax exemptions were challenged as violations of the constitutional prohibition concerning an establishment

of religion. The Supreme Court found that the legislative purpose of the tax exemptions in question was not aimed at establishing, sponsoring or supporting religion. The New York State legislation authorizing the exemption simply spared the exercise of religion from the burden of property taxation levied on private profit institutions. The tax exemption created only a minimal and remote involvement by the church and state, far less than taxation of churches would entail. The exemption tended to compliment and reinforce the desired separation between church and state. The Court found what it called a "national attitude" throughout the United States providing for tax exemption on places of worship, dating back two centuries. The Court concluded: "Nothing in this national attitude toward religious tolerance and two centuries of uninterrupted freedom from taxation has given the remotest sign of leading to an established church or religion and on the contrary it has operated affirmatively to help guarantee the free exercise of all forms of religious belief." (397 U.S. 678).

Capital punishment

In the case *Maxwell* v. *Bishop* (398 U.S. 262), decided in June 1970, the Supreme Court remanded to the lower court a case in which the petitioner had been found guilty of a capital crime and sentenced to death. The case was remanded because the Supreme Court found that persons might possibly have been improperly excluded from the jury when the case had been tried. Several prospective jurors had been kept off the jury on the grounds that they had voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction. The Court held that this exclusion was in conflict with the rule laid down in a previous case. According to this rule, a person can be excluded from the jury only when that person states unambiguously that he would automatically vote against the imposition of capital punishment no matter what the trial might reveal. Only in the latter case could it be supposed that the jurors would be unable to follow conscientiously the instructions of the trial judge and to consider fairly the imposition of the death sentence in a particular case.

The right to a speedy trial

The Sixth Amendment to the Constitution guarantees the accused in all criminal prosecutions a right to a speedy and public trial. In the case *Dickey* v. *Florida* (398 U.S. 30), decided in May 1970, the Supreme Court considered the claim of a petitioner that he had been denied his right to a speedy trial. He had been tried in 1968 on charges of alleged criminal acts committed in 1960. The court held that on the record in the case, where the petitioner had been at all times available to the State and there was no valid excuse for the prejudicial delay, the judgement against the petitioner must be vacated by the trial court.

Unreasonable Searches

The case *Chambers* v. *Maroney* (399 U.S. 42), decided in June 1970, involved the admissibility of evidence seized from an automobile which had been searched without a warrant. Under the Fourth Amendment to the Constitution all persons are guaranteed security "in their persons, houses, papers and effects against unreasonable searches and seizures . . .", and search warrants may be issued only upon probable cause. The Supreme Court in the instant case followed a number of previous cases, also concerning searches of automobiles without warrants, which had established the rule that so long as probable cause could be shown a search of an automobile could be carried out without a warrant. The Court said that for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars. An automobile, because of its mobility and consequent risk of loss of evidence, may be searched without a warrant in circumstances that would not justify a warrant-less search of a house or office.

UPPER VOLTA

ORDINANCE No. 70-21 PRES.IS.DI. OF 31 MAY 1970 ESTABLISHING REGULATIONS FOR THE CONDUCT OF THE CONSTITUTIONAL REFERENDUM[1]

TITLE I

Propaganda

Art. 1. Only legally constituted political parties shall engage in propaganda advocating or opposing the adoption of the Constitution. Such propaganda shall be carried on during the 14 days preceding the plebiscite.

Art. 2. Meetings shall not be held on public thoroughfares and shall not continue after 11 p.m.; notice of a meeting shall be given to the chief of the administrative district concerned at least eight hours in advance.

Art. 3. The signatory of such notice shall be responsible for maintaining order, preventing any breach of the law and ensuring that the character of the meeting is at all times that described in the notice and that no speech is made which is contrary to public policy or which contains an incitement to an act constituting a crime or an offence *(délit)*.

He shall be responsible for any violations of the provisions of articles 2 and 3 of this Ordinance.

Art. 4. An administrative or judicial official may be appointed by the administrative authorities of the district to attend the meeting.

He shall select his own place. If so requested by the person who gave notice of the meeting, or if disturbances or acts of violence occur, he shall dissolve the meeting.

Art. 5. Article 463 of the Criminal Code shall apply to offences covered by this Ordinance. The statutory limitation on proceedings instituted by the public authorities and on civil action shall be six months.

Art. 6. The provisions of Act No. 20 AL. of 31 August 1959 on the press and offences *(délits)* of the press shall apply to propaganda.

Art. 7. No person shall distribute or cause to be distributed on polling day leaflets, circulars or other propaganda material, subject to the penalties laid down by law.

Art. 8. Throughout the period referred to in article 1 of this Ordinance, special sites shall be set aside by the competent authority in each administrative district for the display of electoral posters.

At each such site equal space shall be allocated to those advocating and those opposing the adoption of the draft Constitution which is the subject of the referendum.

No posters relating to the referendum may be displayed, even in the form of stamped posters, outside the said sites or at sites reserved for those holding a contrary opinion.

Art. 9. The sites shall be allocated in the order of receipt of the applications, which shall be submitted in the chief town of the administrative district not later than eight days before polling day.

...

TITLE III

Voting

Art. 13. Voting shall begin at 8 a.m. and end at 6 p.m. on the day specified in the decree convening the electoral body.

Art. 14. While the polls remain open the electoral body shall concern itself only with the referendum for which it was convened. It shall not engage in any controversy or discussion.

...

Art. 19. The vote shall be secret.

...

[1] *Journal officiel de la République de Haute-Volta, Numéro spécial*, No. 21, of 19 May 1970.

CONSTITUTION OF THE REPUBLIC OF THE UPPER VOLTA[2]

PREAMBLE

THE PEOPLE OF THE UPPER VOLTA

Paragraph I

Solemnly proclaim their adherence to the principles of democracy and of human rights, as set out in the Declaration of the Rights of Man and of the Citizen of 1789 and in the Universal Declaration of Human Rights of 1948.

Paragraph II

Affirm their intention to co-operate in peace and friendship with all peoples who share their ideal of justice, liberty, equality, fraternity and human solidarity.

Paragraph III

Proclaim their adherence to the cause of African unity and unreservedly support any policy aimed at that objective.

Paragraph IV

Guarantee the freedom of the capital and investments allocated to programmes established or approved by the Government in accordance with international agreements.

Paragraph V

Proclaim that the basic principles of the constitutional organization of the Upper Volta are:

Democracy based on the separation of the legislative, executive and judicial powers;

Government of the people by the people and for the people.

Paragraph VI

Reject any concept of personal power.

Paragraph VII

The preceding provisions form an integral part of this Constitution.

[2] Draft Constitution published by decree No. 70-93 PRES.SG of 19 May 1970 (*Journal officiel de la République de Haute-Volta*, No. 21, of 19 May 1970) and approved by the people of the Upper Volta in the referendum of 14 June 1970 (*ibid.*, No. 27, of 25 June 1970).

Title I.

The State and Sovereignty

Art. 2. The Republic of the Upper Volta is one and indivisible, secular, democratic and social.

Its principle shall be government of the people by the people and for the people.

Art. 3. National sovereignty shall be vested in the people.

No section of the people and no individual may assume the exercise of sovereignty.

It shall be exercised in accordance with this Constitution, which shall be the fundamental law of the State; any law or act which is contrary to its provisions shall be null and void. Consequently, any citizen shall be entitled to appeal to the Supreme Court against unconstitutional laws and acts.

Art. 4. The people shall exercise sovereignty through their elected representatives and by referendum.

The Supreme Court shall ensure that there are no irregularities in referendum operations and shall announce the results thereof.

Art. 5. Suffrage shall be universal and equal; voting shall be secret.

Art. 6. The political parties and groups shall assist in the exercise of the suffrage. They may be formed and engage in their activities freely, subject to respect for public order, the principles of sovereignty and democracy, and the laws of the Republic.

Art. 7. In addition to its specialized functions – the protection of territorial integrity and the maintenance of order – the army may co-operate in economic, social and cultural progress and, in general, in any activity which contributes to national progress.

Art. 8. The procedures for the application of articles 6 and 7 above shall be established by organic laws.

Title II

The fundamental rights and duties of the individual and the citizen

Art. 9. The human person is sacred. The State must respect and protect it.

Art. 10. No person may be arrested or detained except in accordance with the provisions of law and an order from the legitimate authority.

Internment or deportation by administrative measure may be ordered only under the conditions specified by law. No citizen who is the object of such a measure may be detained in a penal establishment under ordinary law.

Art. 11. The residence of every person inhabiting the territory of the Republic shall be inviolable; such residence may be entered only in the manner and in the cases specified by law.

Art. 12. The oppression of one group of the people by another shall be prevented.

Art. 13. Citizens shall enjoy freedom of speech, the press, assembly and association and the freedom to organize parades and demonstrations under the conditions determined by law. The only restrictions on the exercise of these rights shall be those imposed by the freedom of others and by public security and order.

Art. 14. The Constitution guarantees to all freedom of belief, the free profession of a faith and the free practice of religion, subject to respect for public order.

Art. 15. No legally constituted organization may be dissolved except in the manner laid down by law.

Art. 16. Public education shall be secular. Private education need not be secular, provided that it respects the laws and regulations in force.

Art. 17. The Republic of the Upper Volta shall guarantee all its citizens, without distinction as to sex, within the content of the law:

Equal access to employment;

The right to rest, social assistance and education;

Freedom to join organizations of their choice for the protection of their interests;

The right to strike and the freedom to work.

Art. 18. The right to own property is guaranteed by the Constitution. There may be no derogation of this right except when necessary in the public interest; such a necessity must be duly established in accordance with legal procedures.

Art. 19. Free enterprise is guaranteed by the Constitution; it shall be carried on in conformity with the pertinent laws and regulations.

Art. 20. All citizens, without distinction as to race, ethnic origin, sex or religion, are electors and may be elected to office under the conditions laid down by law.

Art. 21. The Republic shall ensure to all equality before the law, without distinction as to origin, race, sex, religion or political opinion. It shall respect all beliefs.

All distinctions on the grounds of birth, class or caste, particularly with respect to marriage, shall be abolished.

Any act of racial, ethnic, regionalist or religious discrimination, and any propaganda of a racist or regionalist nature, shall be punished by law.

Art. 22. It is the duty of all persons inhabiting the territory of the Upper Volta to comply with the Constitution and the other laws of the Republic, to pay their taxes, and to fulfil their social obligations.

Art. 23. It is a sacred duty for every citizen of the Upper Volta to defend his country and the integrity of the national territory.

Title III

The President of the Republic

...

Art. 25. The President of the Republic shall be elected for five years by direct universal suffrage.

Candidates for the office of President of the Republic must enjoy civil and political rights and be not less than 35 years of age at the time of the election.

The President of the Republic shall be elected by an absolute majority in the first ballot. If an absolute majority is not obtained, the President of the Republic shall be elected by a relative majority in the second ballot, which shall take place 15 days after the first ballot. Only the two candidates who have received the greatest number of votes in the first ballot may be nominated in the second ballot. In the event of the withdrawal of one or both of the candidates, the next candidates on the list shall be nominated in the order in which they appear after the first ballot.

...

Title IV

The National Assembly

Art. 40. Parliament shall be constituted by a single assembly, known as the "National Assembly", the members of which shall be known as deputies. In addition to their legislative function, deputies shall promote the civic, social and economic life of the nation. They shall in all circumstances conduct themselves in a worthy manner befitting representatives of the people.

...

Art. 43. The deputies shall be elected by direct universal suffrage. The term of office of each legislature shall be five years.

The number of deputies and the manner in which they shall be elected, and the regulations governing disqualifications and incompatibilities shall be established by law. The conditions in which new elections should be held in the event of seats becoming vacant in the National Assembly shall also be determined by law.

...

Title IX

The judicial authority

Art. 90. Justice shall be rendered in the territory of the Republic in the name of the people of the Upper Volta.

In the exercise of their functions, judges of the bench shall be subject only to the authority of the law.

The President of the Republic shall guarantee their independence. He shall be assisted by the Superior Council of the Judiciary.

...

Art. 94. No one may be arbitrarily detained in custody.

An accused person shall be presumed innocent until he is proved guilty under a procedure providing the safeguards essential to his defence.

The judicial authority, as the guardian of personal freedom, shall ensure respect for this principle as prescribed by law.

...

Title XII

International treaties and agreements

...

Art. 102. If the Supreme Court, having been consulted by the Prime Minister or the President of the National Assembly, declares that an international instrument contains a clause which is contrary to the Constitution, authority to ratify it may not be granted without an amendment of the Constitution.

Art. 103. Treaties or agreements which have been duly ratified shall, from the time of their application, take precedence over laws, provided that in each case the agreement or treaty is applied by the other party.

Title XIII

Amendment of the Constitution

Art. 104. Action to amend the Constitution shall be initiated jointly by the President of the Republic, on the proposal of the Prime Minister, and by the deputies.

Art. 105. A decision of principle to amend the Constitution must be adopted by a three-quarters majority of the members of the National Assembly.

A referendum shall be held on any bill to amend the Constitution unless the draft or proposal in question has been approved by a four-fifths majority of the members of the Assembly.

Art. 106. No amendment procedure may be initiated or pursued when there is an encroachment on the country's territorial integrity.

The Republican form of the Government shall not be subject to amendment.

Title XIV

Exceptional provisions

Art. 107. The full protection of this Constitution shall extend to all citizen who participated directly or indirectly in the exercise of power at any level under the military Government or in the investigation of the management of public funds under the old regime.

Nevertheless, the persons referred to in the preceding paragraph shall continue to be fully responsible under criminal and administrative law for their management of the public funds, and proceedings may be brought against them under the legislation in force.

...

ORDINANCE No. 70-37 PRES.IS.DI. OF 31 AUGUST 1970, DEFINING THE SPECIAL RULES FOR THE ELECTION OF DEPUTIES TO THE NATIONAL ASSEMBLY[3]

Title I

General

Art. 1. Deputies to the National Assembly shall be elected by direct universal suffrage. The system shall be that of proportional representation according to the electoral quota, the residual votes being apportioned according to the system of highest residue.

Art. 2. The number of seats in the National Assembly shall be 57.

...

Each candidate shall be assisted by an alternate candidate ...

Art. 3. When a seat becomes vacant as a result of death, resignation or any cause other than the invalidation of an election, the alternate candidate shall be invited by the President of the National Assembly to perform the functions of the holder of the seat. Such a replacement, whatever the cause, shall be irrevocable.

...

Title II

Qualifications for election and disqualifications

Art. 7. All voters shall have the right to be elected, subject to the provisions of articles 8 and 9 below.

[3] *Journal officiel de la République de Haute-Volta*, No. 39, of 17 September 1970.

Art. 8. No person may be a candidate unless he is at least 23 years of age in the election year.

Art. 9. Convicted persons shall be disqualified for election if their conviction permanently bars their registration on the electoral roll.

Persons whose conviction temporarily bars their registration on the electoral roll shall be disqualified for election for a period as long again as that for which they may not be registered on an electoral roll.

The following persons shall also be disqualified for election:

(1) Persons deprived, by judicial order under the laws in force, of their right to be elected;

(2) Persons convicted of corrupt electioneering practices;

(3) Persons under court guardianship.

Art. 10. The registration as a candidate of a person who is disqualified for election by virtue of the preceding articles shall be unlawful.

In the event of a disputed registration, the candidate may refer the matter to the Supreme Court, which shall give its ruling within five days.

Art. 11. A person who is found to be disqualified for election after the announcement of his election or who during his term of office becomes disqualified on the grounds specified in this Ordinance shall *ipso facto* forfeit his status as a member of the National Assembly.

Such forfeiture shall be declared by the Supreme Court, at the request of the President of the National Assembly or of the Prime Minister.

Art. 12. The provisions of this title shall apply to alternate candidates.

Title III

Incompatibilities

[This title consists of articles 13 to 25 relating to the incompatibility of certain functions with the office of deputy.]

...

Title V

The electoral body

Art. 32. The electoral body shall consist of persons registered on the electoral roll.

Art. 33. In order to qualify for registration on the electoral roll a person must:

(1) Be a national of Upper Volta;

(2) Have attained the age of 21 before the rolls are closed, regardless of sex;

(3) Be domiciled in the Republic.

However, nationals of Upper Volta established abroad may exercise their right to vote in the conditions that shall be fixed by decree.

Public officials and persons of similar status shall not be required to meet any residence qualification.

Art. 34. The following persons may not be registered on an electoral roll:

(a) Persons convicted of a serious offence *(crime)*;

(b) Persons under sentence of imprisonment for a term of more than three months, for theft, false pretenses or fraudulent conversion, misappropriation committed by trustees of public funds, or sex offences in accordance with existing legislation;

(c) Persons under sentence of imprisonment for more than six months for any less serious offence *(délit)* except an offence committed through negligence unless the offence was accompanied by that of absconding;

(d) Persons in contempt of court;

(e) Discharged bankrupts;

(f) Persons under interdiction.

None the less, persons who when sentenced have been exempted by the courts from the temporary suspension of their right to vote may register or, if they have already done so, shall not be struck off the roll.

...

Title VI

Electoral campaign

Art. 36. The opening date of the electoral campaign shall be determined by decree.

Electoral meetings and all electoral propaganda by any means whatsoever shall be prohibited except during the statutory duration of the electoral campaign.

A meeting which is held for the purpose of selecting or hearing candidates for the National Assembly and which is open only to voters, candidates and the agent of each candidate shall constitute an electoral meeting.

Art. 37. Meetings shall not be held on public thoroughfares and shall be prohibited between 11 p.m. and 7 a.m.; notice thereof shall be given in writing at least eight hours in advance to the head of the administrative district at his office, during the statutory office hours of the administrative services.

Art. 38. Each meeting shall have at least three presiding officers. They shall be responsible for maintaining order, preventing any violation of the law, ensuring that the meeting preserves the nature ascribed to it in the notice and prohibiting any speech that is contrary to public policy or contains an incitement to any action classified as a serious offence *(crime)* or a less serious offence *(délit)*.

Unless they are designated by the signatories of the notice, the presiding officers shall be elected by those attending the meeting, at the beginning of the meeting.

The presiding officers and, prior to the appointment of such officers, the signatories of the notice shall be held responsible for violations of the provisions of articles 37 and 38 of this Ordinance.

Art. 39. An administrative or judicial official may be designated by the administrative authorities of the district to attend the meeting.

He shall select his own place. If he is requested to do so by the presiding officers or if disturbances or acts of violence occur, he shall dissolve the meeting.

Art. 40. The distribution of leaflets, circulars and other propaganda material on election day shall be prohibited . . .

Art. 41. The distribution of leaflets, circulars or other propaganda material by a public official during his working hours shall be prohibited . . .

Art. 42. Throughout the electoral period, special sites shall be set aside in each administrative district by the competent authority for the display of electoral posters.

Art. 44. A joint decree issued by the Minister of the Interior and the Minister of Information shall lay down the conditions in which the political parties or groups may utilize the national radio and television stations for political broadcasts throughout the electoral period.

Title VIII

Voting

Art. 52. Voting shall begin at 7 a.m. and end at 6 p.m. on the day specified in the decree convening the electoral body.

Art. 53. While the polls remain open, the electoral body shall concern itself only with the elections for which it was convened. It shall not engage in any controversy or discussion.

. . .

Art. 59. The vote shall be secret.

VENEZUELA

NOTE[1]

1. Decree No. 345, dated 18 September 1970 (*Gaceta Oficial* No. 29,322) provides that projects for the construction of one-household, two-household and multiple-household structures, for sale or rent, which satisfy the conditions laid down in the articles of the Decree, are to be declared of public utility for the purpose of qualifying for income tax exemption under article 44 of the Rent Control Act.

2. Under the Ministry of Finance Resolution of 14 August 1970 (*Gaceta Oficial* No. 29,292), no income tax is to be paid on interest from capital used to finance the construction of dwellings declared to be of public utility. These measures are intended to help boost Venezuela's economic development and to give an impetus to the construction industry and thus benefit the working classes by providing employment opportunities.

3. The Act partially amending the Agricultural and Livestock Bank Act of 20 January 1970 (*Gaceta Oficial extraordinaria* No. 1,373) is designed to satisfy the rural credit needs of small and medium-scale farmers whether or not they receive grants under the Land Reform Act.

4. The Act partially amending the National Institution for Educational Co-operation Act of 8 January 1970 (*Gaceta Oficial* No. 29,115) is intended to provide vocational training for workers, contributing to the training of skilled personnel and instituting training programmes for the young unemployed.

5. The Act concerning Civil Service Careers of 25 August 1970 (*Gaceta Oficial extraordinaria* No. 1,428) regulates the rights and duties of civil servants in their relations with the National Civil Service by instituting a system of personnel administration whereby all the standards and procedures for the various juridical and administrative posts in the civil service are established on the basis of merit and all political, social, religious or any other kind of discrimination is precluded.

6. The Resolution of the Chamber of Deputies of 27 April 1970 (*Gaceta Oficial* No. 29,201) exhorts public and private institutions and the various political groups and schools of thought to reflect on the great damage done to the country by the failure to make use of outstanding talents in the sciences, technological research and the arts, all of which fields are essential to Venezuela's spiritual and material independence.

7. The Organic Law on Suffrage of 29 August 1970 (*Gaceta Oficial extraordinaria* No. 1,435) states that on their eighteenth birthday all Venezuelan nationals who are not subject to civil disability or under sentence of imprisonment have the duty to vote.

It also states that, provided they satisfy the conditions set forth in this Law, aliens may participate in the separate elections to the Municipal Councils.

[1] Note furnished by the Government of Venezuela.

ORGANIC LAW CONCERNING THE STATE LEGAL DEPARTMENT OF 29 AUGUST 1970[2]

Title I

General provisions

Art. 1. The State Legal Department shall supervise the strict observance of the Constitution and the laws and shall be under the direction and responsibility of the Chief State Counsel of the Republic who shall carry out his functions directly or through such other auxiliary officials as are determined by this Law.

Title II

Functions of the State Legal Department

Art. 6. The functions of the State Legal Department shall be to:

(1) Ensure that the Constitution and the laws are observed throughout the national territory;

(2) Ensure that the constitutional rights and guarantees are respected;

(3) Ensure correct enforcement of the laws and the guarantee of human rights in the gaols and other prison establishments;

(4) Ensure that justice is administered speedily and properly and that the laws are strictly applied in the courts of the Republic in criminal proceedings and proceedings concerning public policy *(orden público y las buenas costumbres)*;

(5) Supervise the opening or continuation of preliminary investigations;

(6) Denounce judges exercising ordinary or special jurisdiction in accordance with the Organic Law concerning the Judiciary when they make mistakes involving disciplinary action;

(7) Institute appropriate action to ensure that the civil, criminal, administrative or discriplinary responsibilities incurred by public officials in the exercise of their duties are properly discharged;

(8) Conduct the criminal proceedings in cases in which proceedings may be instituted or continued without prior application or petition by one of the parties and in the other cases prescribed by law;

(9) Supervise the activities of organs of the judicial police in conducting the preliminary investigations;

(10) Investigate cases of arbitrary arrest and institute proceedings to bring them to an end; facilitate the exercise of public liberties and supervise the activities of police authorities;

(11) Ensure that all the legislative and statutory provisions regarding the organization and operation of the administration of justice are faithfully implemented and, in particular, that judges adhere to the time-limits of due process;

(12) Defend the independence and autonomy of judges in the exercise of their functions;

(13) Make sure that the human and constitutional rights of prisoners and minors in police lockups, gaol premises, military prisons, labour camps, gaols and penitentiaries, correctional institutions for minors and other prison and detention establishments are respected and supervise the condition of the prisoners and internees; to take appropriate legal steps to uphold human rights when it is established that these have been infringed or violated;

Officials of the State Legal Department shall have access to all the above-mentioned establishments for the exercise of this function. Any person who in any way obstructs them in the exercise of this duty shall be liable to disciplinary action;

(14) Ensure throughout the criminal proceedings whether in ordinary or special jurisdiction, beginning with the judge's order to proceed with the case *(auto de proceder)* compliance with the constitutional principle establishing the inviolable right to defence at all stages and levels of the proceedings;

(15) Request the assistance of criminal police authorities in the performance of its official functions; in such cases these authorities shall act under the supervision of the State Legal Department;

(16) Request each judge to give priority to the collection and investigation of factual information only;

(17) Request the co-operation of any public authority, civil servant or government employee or enterprise under the economic or executive control of the State; such persons or authorities shall be obliged to co-operate without delay and to provide whatever documents and information may be requested unless, in the opinion of the highest organ of the relevant administrative structure, such documents of information constitute a State secret;

(18) Request the services of the judicial police authorities referred to in the Code on Criminal Procedure for the initiation of the preliminary investigation or for any other special activity relating to the investigation;

(19) Intervene in proceedings concerning persons who are a danger to society;

(20) Any other prescribed by law.

...

[2] *Gaceta Oficial de la República de Venezuela*, No. 1,434 Extraordinario, of 16 September 1970.

ORGANIC LAW ON SUFFRAGE OF 25 AUGUST 1970[3]

Title I

Fundamental provisions

CHAPTER I

Scope of the Law

Art. 1. This Organic Law shall govern elections held in the Republic by universal, direct and secret suffrage.

Art. 2. Each state and the Federal District shall elect two (2) senators to Congress.

Additional senators shall be elected in accordance with the principle of proportional representation of minorities established in this Law, but in no case shall more than two (2) additional senators be from the same national political party.

Art. 3. The number of deputies shall be determined on the basis of a prescribed population which shall equal 0.55 per cent of the country's total population.

In each district the number of deputies elected shall equal the number obtained by dividing the number of its inhabitants by the population base.

Any state whose population is too small to qualify for electing two (2) deputies shall nevertheless elect them.

Every federal territory shall elect one deputy.

Additional deputies shall also be elected in accordance with the principle of proportional representation of minorities; however, in no case shall more than four (4) additional deputies be from the same national political party.

CHAPTER II

Rights and duties of voters

Art. 7. All Venezuelan citizens over eighteen (18) years of age, in respect of whom there has not been a final judgement placing them under a civil disability or inflicting on them a sentence involving loss of political rights, shall have the right and the duty to register on the permanent electoral rolls, and to vote.

Members of the armed forces shall not exercise voting rights while in active military service.

Art. 8. In the separate Municipal Council elections, aliens who meet the same conditions laid down in the previous article, as for Venezuelan citizens, shall be entitled to register on the permanent electoral roll and to vote, provided they have been resident in the country for more than ten (10) years and have resided for one (1) year in the district concerned.

CHAPTER III

Eligibility

Art. 9. The conditions for eligibility for election as President of the republic, senator or deputy in Congress or deputy in the State Legislative Assemblies are those laid down by the Constitution.[4] The conditions for eligibility as members of the Municipal Councils shall be determined in the Organic Law of the Municipalities.

The following shall not be eligible for election as senators or deputies in Congress or deputies in the Legislative Assemblies: national, state or municipal officials and employees, and those of autonomous institutes or of enterprises in which the Republic, state, Federal District, federal territories or municipalities have a deciding participation in them, and in every case where this participation amounts to over 50 per cent (50%) of their registered capital, if the election takes place in the jurisdiction in which they serve, except in cases of temporary, electoral, welfare, teaching or academic positions or legislative or municipal representation. In order to be eligible in a jurisdiction other than that in which they serve, governors and secretaries of government of the states, Federal District and federal territories must be permanently separated from their posts by the time the elections are held.

Art. 11. The following persons shall not stand for election as senator or deputy in Congress:

(1) The President of the republic, the Ministers, the Secretary of the President of the Republic, the President and Secretary of the Supreme Electoral Council and the presidents and directors of the autonomous institutes, unless they have been permanently separated from their posts three (3) months before the date fixed for the election;

(2) The governors and secretaries of government of the states, the Federal District and federal territories, if the representation is that of their jurisdiction, unless they have been permanently separated from their posts three (3) months before the date fixed for the election;

(3) National, state or municipal officials and employees and those of the autonomous institutes or of enterprises in which the state has a deciding participation, as described in article 10 of this Law, if they are serving at the time of nomination, except in cases of temporary, welfare, electoral,

[3] *Ibid.*, No. 1,435 Extraordinario, of 17 September 1970.

[4] For extracts from the Constitution of Venezuela, see *Yearbook on Human Rights for 1961*, pp. 390-398.

teaching or academic positions or legislative or municipal representation.

CHAPTER IV

Proportional representation

Art. 13. Under this Law, proportional representation shall be regulated, in elections of senators and deputies for Congress, deputies for the Legislative Assemblies and members for the Municipal Councils, on the basis of allocation by quotient.

...

Title II

Electoral bodies

CHAPTER I

General provisions

Art. 19. The following bodies shall be responsible for organizing, supervising and applying the electoral processes in the manner established by this Law:

(1) The Supreme Electoral Council;
(2) The electoral councils; and
(3) The electoral boards.

...

Art. 21. All citizens have the duty to cooperate with the electoral bodies responsible for directing, organizing and supervising the electoral processes.

Title IV

Elections

CHAPTER I

Date and notice of elections

Art. 91. The elections for President of the republic, senators and deputies of the National Legislative Chambers, and deputies of the Legislative Assemblies shall be held simultaneously, unless the Supreme Electoral Council decides by a three-quarters majority that the elections are to be held separately, in which case the elections for President of the Republic shall be held first.

...

CHAPTER III

Voting

SECTION 2

Casting ballots

Art. 117. In order to vote, each elector shall appear in person before the board and witnesses and produce his personal identity card which shall be checked against the entry on the corresponding electoral roll, and he shall comply with any formality that may be required in accordance with the Law to establish that he has not already voted.

The board shall instruct the elector on the procedure for casting his ballot and shall inform him that he may do so with complete freedom as the secrecy of the ballot is guaranteed. The board shall explain what secrecy of the ballot means for the elector's benefit.

Art. 118. When the requirements laid down in the above article have been fulfilled, the voter shall enter the booth containing the voting machine which shall be arranged in such a way as to guarantee secrecy of the ballot. Once there he shall proceed to cast his ballot.

Each voter shall remain in the above-mentioned booth only as long as is necessary for him to cast his ballot, in accordance with the arrangements made by the Supreme Electoral Council; should he remain there any longer, the board shall order him out.

Art. 119. No person may accompany the voter when he casts his ballot, nor may any person accompany him from the board's office to the voting booth; no person may speak with him alone after he has crossed the threshold of the entrance to the polling station, nor may any person say, even in the presence of others, anything that might influence his decision, either by coercing or prompting him to favour a particular list or candidate. However, persons unable to use their upper limbs may be accompanied to the voting booth by a person of their choice. Similarly, persons who are unable to use their lower limbs may be taken to the voting booth.

...

Art. 122. No voter who is registered on the permanent electoral roll and who produces his identity card may be denied the right to vote.

...

Art. 126. No person may go armed to the polls even if he is authorized to bear arms.

Uniformed members of the armed forces responsible for maintaining law and order may not enter the polling stations bearing regulation arms unless summoned by the board itself.

Art. 127. On election day all establishments dispensing alcoholic beverages shall remain closed and no public meeting or demonstration or function that might affect the normal election operations shall be permitted. Public entertainments may begin after 6 p.m.

Art. 128. On election day, only the electoral bodies may convey electors in official mass transport vehicles.

CHAPTER IV

Polling

Art. 138. All the operations referred to in this chapter shall be public.

CHAPTER VI

Electoral witnesses

Art. 147. In order to qualify to witness elections a person must be a Venezuelan citizen, over 18 years of age, able to read and write, and be registered on the permanent electoral rolls.

Art. 148. Political parties and groups of electors participating in elections as well as candidates for the office of President of the Republic may designate persons to witness the balloting and polling, for which purpose the electoral bodies shall give them the necessary credentials.

. . .

CHAPTER VII

Electoral propaganda

Art. 153. Political parties and citizens in general may engage in any kind of electoral propaganda, orally or in writing, through the press, radio, television and all kinds of posters, announcements, leaflets or any legal means designed to encourage the voters to register on the permanent electoral rolls or to vote, either generally or for their candidates.

The Supreme Electoral Council shall determine all matters concerning electoral propaganda.

National political parties and candidates for the office of President of the Republic shall have access to the public communication media for their electoral propaganda. The Supreme Electoral Council shall ensure that this provision is observed.

Art. 154. The budget of the Supreme Electoral Council for the election year shall include an appropriation towards financing the parties' electoral propaganda. This appropriation shall be distributed among the parties that obtain more than 10 per cent of all valid votes in the elections for the National Legislative Chambers, in proportion to the votes each party has obtained. The Supreme Electoral Council shall distribute the respective amounts after receiving proof of the expenditures.

In addition, the Supreme Electoral Council may, to the extent that the funds available to it in the budget allow, buy time on commercial television and radio stations in order to facilitate the parties' electoral propaganda. This time shall be distributed equally among the parties having obtained more than 5 per cent of the total valid votes in the last elections for the National Legislative Chambers.

Art. 155. Anonymous propaganda, propaganda designed to persuade the public not to vote, propaganda constituting an affront to human dignity or offending public morality, and propaganda inciting to disobedience of the laws shall be prohibited; this shall not, however, debar analysis or criticism of the law of the land.

All printed matter of a political nature shall bear the relevant printer's mark.

Art. 156. Owners or managers of printing houses, periodicals, radio or television stations, cinemas and any other publicity enterprises or organs shall not be responsible for the electoral propaganda carried out under the authority and on the responsibility of the political parties or citizens concerned, with the exception of propaganda announcing public meetings or demonstrations concerning which the authority referred to in article 163 publicly declares that the legal requirements have not been complied with.

Art. 157. Propaganda from loudspeakers in vehicles moving through streets or thoroughfares shall be permitted within the limits to be established by the Supreme Electoral Council equally for all participants in the electoral process, and shall be confined to the encouraging of citizens to fulfil their duty to vote, to the reading of lists of candidates and of the basic points in their programmes, to the inviting of citizens to attend functions held for the purposes of electoral propaganda, or to the making of any similar announcement.

The electoral authorities may seek the assistance of the police authorities in order to ensure strict compliance with these rules.

Art. 158. Posters, drawings or other similar propaganda devices shall not be posted on public buildings or monuments, churches, or trees along municipal avenues and parks.

. . .

Art. 159. National emblems and portraits or pictures of the forefathers of our independence shall not be used in electoral propaganda.

. . .

Art. 162. Posters, drawings or other similar propaganda devices may not be affixed to private houses or buildings without the occupants' consent. The occupants may take down and dispose of such propaganda.

Art. 163. Notice of public meetings or meetings for the purpose of electoral propaganda, demonstrations and processions must be given by their sponsors to the competent civil authority of the locality and to the District Electoral Council or the Municipal Electoral Council, if the municipality involved is other than the local municipality, at least forty-eight (48) hours in advance.

Art. 164. Electoral propaganda shall cease forty-eight (48) hours before the time voting is scheduled to begin and no further electoral propaganda shall be permitted.

...

Art. 165. Publications, radio and television broadcasts and other official media of education and communication shall not be used for any kind of electoral propaganda except such as may be carried out by the electoral bodies.

Title V

Electoral disputes

Art. 168. The holding of elections before the Supreme Electoral Council has inaugurated them in accordance with the provisions laid down in this Law shall render them invalid in their entirety.

Art. 169. Any kind of election shall be invalid if:

(1) The candidate elected does not fulfil the conditions prescribed in this Law or is otherwise ineligible;

(2) There has been fraud, bribery, subornation or violence in the registration of voters, or in the balloting or polling.

...

Art. 171. Electoral bodies, national political parties and all citizens over twenty-one (21) years of age who are registered on the permanent electoral rolls and reside in the electoral district concerned may institute proceedings to have an election declared invalid as provided for in this Law.

Regional political parties may institute such proceedings only with respect to the electoral districts in which they operate.

Art. 172. Proceedings for the invalidation of elections under this Law shall be instituted before the Supreme Court of Justice.

...

YUGOSLAVIA

DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS IN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA IN 1970*

In 1970, in various fields, the basic ideas and principles on which the Yugoslav community of peoples is based were, through various legal provisions, embodied in Yugoslav legislation: the principles of socialist humanism, self-management in all fields of social life, equality of nations and nationalities, friendship and co-operation among all States and peoples.

This brief report will indicate the most important legal provisions (federal and republican) and decisions of the Constitutional Courts (of Yugoslavia and the republics) relating to human rights. It should be stressed that it is not possible to give a complete picture of the situation in Yugoslavia in such a brief report since it is impossible to list all the legislative enactments concerning human rights adopted by the republics and communes which, following considerable decentralization in Yugoslavia, have been empowered to resolve many matters quite independently. An outline of the legislation adopted by the republics is therefore given for the purposes of illustration because it was not possible to make a comparative study of the various legal provisions adopted by most of the republics in the period under consideration (for example in the field of labour relations, enforcement of sentences, etc.). For that reason we will also not dwell on certain republican legislative provisions (concerning social security and health insurance) adopted on the basis of federal laws the texts of which were discussed in more detail in the report for 1969.

A list of international agreements concerning human rights ratified by Yugoslavia and published in 1970 is enclosed with this report.

There were no changes of great significance in Yugoslav legislation in 1970. Nevertheless, during that year, preparations began for the adoption of amendments to the Federal Constitution and the Constitutions of the republics. It can be seen from the draft amendments (40 in number) to the Constitution of the Socialist Federal Republic of Yugoslavia that the most important aspects of Yugoslav social, political and economic organization will be covered. The amendments are being discussed and it is expected that they will be adopted in 1971.

I. Criminal procedure and the enforcement of sentences

Following the Law modifying and supplementing the Code of Criminal Procedure, in 1970 republican laws were adopted concerning the enforcement of sentences pronounced against adults and minors.

A. Law modifying and supplementing the Code of Criminal Procedure

(*Official Gazette of the SFRY*, No. 54/1970)

By introducing a few minor modifications, this Law supplements the Code of Criminal Procedure (*Official Gazette of the SFRY*, No. 50/1967) as regards several important aspects of criminal procedure.

Article 5, paragraph 1, of the Criminal Code of 1967 provides that the charge and evidence must be communicated to the defendant in a language he understands. If the proceedings are conducted in a language which he does not know, measures shall be taken to enable him to follow the proceedings through an interpreter (paragraph 2).

The new Law includes a new article 4 *(a)* which reads as follows:

"Criminal proceedings shall be conducted in one of the languages of the nations and nationalities living in Yugoslavia in accordance with the Constitution or the Constitutional Law of the province or other regulations."

Article 5 is amended and supplemented as follows:

"The accused, the plaintiff, the injured party, the defendant, the witness and any other person taking part in the proceedings have the right, if they are Yugoslav citizens, to use their mother tongue and to hear evidence in that language. If the criminal proceedings are not conducted in a language spoken by one of these persons, the court shall inform that person of his right to use the services of an interpreter and it shall be stated in the records that he was informed of that right; his statement in that regard will also be mentioned.

* Note prepared by Mr. Budislav Vukas, government-appointed correspondent, Zagreb.

"The Court shall be responsible for securing an interpreter for persons who are not Yugoslav citizens if they do not understand the language in which the proceedings are being conducted."

Article 334, paragraph 1 (3), of the Code is supplemented by the provision that it is a further substantial violation of the criminal procedure provisions to refuse the accused, the defendant, the injured party as the plaintiff or the civil claimant, notwithstanding their request, permission to use their mother tongue in the principal hearing and to follow the course of it in that language (article 7 of the Law).

The second area in which substantive changes occur under the new Law is that relating to compensation for wronfgul conviction or deprivation of liberty. The new wording of article 8 of the Code no longer provides merely for entitlement to compensation for material damage, but also for entitlement to compensation for damage in general. The reason for the change is to be found in the new text of article 504 which entitles a person whose reputation has been seriously damaged by a wrongful conviction – particularly when the case has been reported by the public information media – to require that the newspapers or other public information media announce the decision quashing the previous conviction.

The new Law introduces detailed provisions concerning the damages to be paid to persons wrongfully deprived of liberty provided for in article 8 of the Code; in 1967, article 507 of the Code established that the provisions concerning compensation for injury resulting from wrongful conviction should be applied in an appropriate manner.

The new article 505 now specifies the conditions for entitlement to compensation for damage:

"A person shall be entitled to compensation for injury:

"(1) If he has been placed in custody pending trial and if proceedings have not been instituted subsequently or if proceedings have been suspended by a decision which has the force of *res judicata* or if the person has been acquitted of the accusation or if the accusation has been disallowed by a decision which has the force of *res judicata*;

"(2) If he has served a sentence involving deprivation of liberty, and if, when proceedings are re-opened or a motion for the protection of legality is submitted, a sentence is pronounced involving deprivation of liberty for a shorter period of time than that already served or if a sentence which does not involve imprisonment is pronounced or if the convicted person is acquitted;

"(3) If, as the result of an error or an action contrary to the law on the part of an authority, he has been wrongfully deprived of liberty or kept in detention or in a correctional penal institution or an educational and correctional centre for longer than specified."

The main provisions of the new Law concerning compensation for material damage are as follows:

"*Article 500*

"A person who has received a criminal sentence or who has been convicted by a decision having the force of *res judicata* but whose sentence has been suspended shall be entitled to compensation for damage for wrongful conviction if, after the institution of extraordinary appeal proceedings, the new proceedings have been suspended or if he has been acquitted of the accusation or if the accusation has been disallowed by a decision having the force of *res judicata*, except in the following cases:

"(1) If the proceedings or the decision rejecting the accusation are suspended because, in the new proceedings, the injured party as the plaintiff or civil claimant has abandoned the proceedings, or if the injured party has withdrawn his claim and has done so by agreement with the accused;

"(2) If, in connexion with a request for the reopening of the proceedings to the detriment of the accused, the new proceedings are discontinued in accordance with article 133 of the Code;

"(3) If, in the new proceedings, the accusation is rejected by a decision to the effect that the court has no jurisdiction and if the authorized plaintiff has instituted proceedings before the competent court.

"A convicted person shall not be entitled to damages if he has intentionally brought about his own conviction by a false confession or in any other way except under duress.

"In the event of conviction for concurrent offences, entitlement to damages may relate to those offences, taken separately, in respect of which the conditions necessary for recognition of entitlement to compensation for injury exist.

"*Article 501*

"The statutory limitation for entitlement to compensation shall be three years from the day on which the decision acquitting the accused of the charge or disallowing it, or the decision of the court of first instance suspending the proceedings have acquired the force of *res judicata* and, when a higher court has ruled on the appeal, from the date on which the decision of the higher court is received.

"Before filing a claim for compensation for damage, the injured party shall be required to appear before the administrative body responsible for justice at the level of the republic or the province and, in the case of a judgement handed down by a military court, before the Secretariat of State for National Defence, with a view to reaching agreement on the existence, the nature and the extent of damage.

"In the case referred to in article 500, first paragraph, subparagraph (3) of this Code, the claim may be ruled on only if the authorized plaintiff has not instituted proceedings before the competent court within three months from the date on which the decision having the force of *res judicata* is received. If the plaintiff institutes proceedings before the competent court after the expiry of that time-limit, the proceedings relating to compensation for damage shall be suspended until the criminal proceedings have been concluded.

"*Article 502*

"If the claim for damages is not accepted or if the administrative organ does not hand down a decision within three months from the date on which the claim is filed, the injured party may appeal to the competent court for compensation for damage. If agreement is reached only in respect of part of the claim, the injured party may file a petition for the rest of the claim.

"The claim for compensation for damage shall be filed against the republic or against the autonomous province in whose territory the court of first instance is located and, in the case of a decision by a military court, against the Federation. The district court which handed down the decision in the first instance or in whose territory the commune or military court which handed down the decision is located, shall be competent to rule on the claim."

B. Republican laws concerning the enforcement of criminal sentences

In 1970, some republics (SR of Serbia, SR of Slovenia and SR of Macedonia) adopted republican laws supplementing the provisions of the federal law on the matter (*Official Gazette of the SFRY*, Nos. 9/1964 and 15/1968). We shall reproduce the basic provisions of the law of the SR of Serbia on the enforcement of sentences involving deprivation of liberty and security measures, mentioning for reference purposes the texts of the Slovenian and Macedonian laws published in the official gazettes of those Republics (*Službeni vesnik na SR Makedonija* No. 16/1970, and *Uradni list SR Slovenije*, No. 39/1970).

In our opinion, the provisions of the law of the SR of Serbia fully reflect the legislator's intention to accord convicted persons the best possible treatment while achieving the aim of the sentence. It should be pointed out that care is taken to equate the treatment of prisoners with the seriousness of their sentence, and with their age, sex, health and prospects for rehabilitation. Particular concern for the integration of minors into society is shown in the law of the SR of Serbia on the enforcement of educational measures, the more important provisions of which will be reproduced.

1. LAW ON THE ENFORCEMENT OF SENTENCES INVOLVING DEPRIVATION OF LIBERTY AND SECURITY MEASURES

(*Official Gazette of the SR of Serbia*, No. 39/1970)

Article 7

Sentences involving deprivation of liberty shall be served in correctional penal institutions, district prisons, prisons and hospital correctional penal institutions.

Article 8

The Republic may set up closed, semi-open and open correctional penal institutions, approved schools for minors, correctional centres for young adults, correctional prisons for women and other specialized institutions where specific categories of convicted persons will serve their sentence.

Article 10

Young adults and persons convicted to one year's imprisonment shall, in principle, be placed in separate sections while serving their sentences in closed correctional penal institutions.

Work shall be allocated to the convicted persons referred to in the first paragraph of this article in accordance with the opportunities available in the correctional penal institution so that they do not come into contact with other convicted persons.

Article 11

While serving sentences in correctional penal institutions, convicted women shall be placed in separate sections.

Article 12

A sentence of rigorous imprisonment or imprisonment or the unexpired part of a sentence if, after deduction of the time spent in custody pending trial, the term exceeds six months shall be served in a correctional prison.

A sentence of imprisonment or the unexpired part of a sentence if, after deduction of the time spent in custody pending trial, the term does not exceed six months shall be served in a district prison.

A person held in custody pending trial on the order of a district court shall be held in a separate section of the district prison.

A sentence imposed in proceedings relating to a lesser offence, or a sentence of imprisonment in lieu of a fine imposed in proceedings relating to a lesser offence, or a period spent in custody

pending trial on the order of an examining judge of a commune court shall be served in a prison ...

Article 14

In general, persons who have been convicted for the first time and whose referral to such prisons or to separate sections might reasonably be expected to have a favourable influence on their rehabilitation and whose sense of responsibility might reasonably be expected to make them discharge their duties conscientiously and not abuse the lack of guards and security measures, and persons who have already served part of their sentence in another correctional penal institution serve their sentences in open prisons.

...

Article 16

The conditions enabling a convicted person to pursue the occupation in which he was engaged before the sentence was enforced, if he has not previously been convicted of an offence, shall be applicable, during the enforcement of the sentence, to persons sentenced to a period of imprisonment of six months for lesser offences and petty offences.

2. LAW CONCERNING THE ENFORCEMENT OF EDUCATIONAL MEASURES

(*Official Gazette of the SR of Serbia,* No. 47/1970)

...

Article 2

During the enforcement of educational measures, adequate protection and aid shall be afforded to minors and supervision shall be exercised with a view to their rehabilitation and subsequent proper development.

During the enforcement of educational measures for minors, the treatment applied will correspond to their age, their degree of intellectual development, their psychological and physical aptitudes and other aptitudes which might have a bearing on their education in the spirit of the objectives of the socialist community.

In line with their physical and psychological aptitudes and their inclinations, minors shall be given vocational training by attending school or courses, or by practical instruction in a given activity.

...

Article 8

The court which ordered the educational measures in the first instance shall, for the purposes of enforcement, transmit the decision concerning the measures ordered to the competent supervisory organ according to the minor's domicile or residence.

The educational measures provided for under this Law are as follows: referral to an education centre, strict supervision, and education in an institution. These measures shall be supervised by the court which ordered them in co-operation with the social security institutions and agencies.

The minor shall attend the education centre daily and the parents or guardian shall be responsible for his regular attendance. Teachers, psychologists and social workers shall be responsible for the education of minors in the centre; the education shall be individual or collective according to the minor's personality.

Measures calling for strict supervision shall be applied under the control of the competent official of the supervisory agency either in the home of the parents or the guardian or in another family or at the supervisory agency. Through advice and co-operation, a specialist will help to ensure that the minor attends school regularly and finds a job; if necessary he will remove him from an environment which might have a bad influence on him.

Measures calling for placement in an educational institution shall be enforced in an educational institution, an approved school, or an institution for handicapped minors. During the enforcement of the educational measures, the minor shall have the right to elementary schooling or vocational training, social security, mail and visits. During this time the supervisory organ shall remain in constant contact with the minors, his parents or guardian and the educational institution where the measures are being enforced in order to prepare as much as possible for the minor's integration into normal life. When they leave the education institution, the supervisory organ shall take full care of minors who have no parents or whose family situation is not normal.

II. Labour relations

In the period under consideration certain republics adopted laws governing specific matters in the field of labour relations and labour law. We shall deal with the Law on labour relations of the SR of Montenegro; the Laws of the SR of Serbia and of the SR of Slovenia (*Official Gazette of the SR of Serbia,* No. 27) (*Official Gazette of the SR of Slovenia,* No. 39/70) regulate almost the same questions.

LAW ON LABOUR RELATIONS

(*Official Gazette of the SR of Montenegro,* No. 11/1970)

I. PRELIMINARY PROVISIONS

Article 1

The present Law governs the procedure for the conclusion of self-management agreements concerning labour relations, the way in which part-

time posts are to be filled, the cases and conditions in which work exceeding normal working hours will be authorized, and work deriving from a civil law relationship.

II. PROCEDURE FOR THE CONCLUSION OF SELF-MANAGEMENT AGREEMENTS CONCERNING THE REGULATION OF MUTUAL LABOUR RELATIONS

Article 2

Labour organizations which do not elect management organs on account of the small number of members comprising the work community and organizations where the nature of work done necessitates some special method of determining mutual labour relations (labour organizations providing services, educational establishments, health, cultural, artistic and sports institutions, etc.) shall regulate their labour relations by a self-management agreement in so far as those relations are not governed by their general acts.

Article 3

The initiative for the conclusion of a self-management agreement shall generally be taken by labour organizations which are involved in the same activity or in a similar activity and which have their headquarters in the territory of one or more communes.

A proposal to initiate proceedings with a view to the conclusion of a self-management agreement may be submitted by any interested labour organization.

The initiative for the conclusion of a self-management agreement may also be taken by the Confederation of Trade Unions, the political-executive organs representative of socio-political communities, and associations of labour organizations.

The Law lays down the procedure for the conclusion of a self-management agreement: labour organizations which agree to the initiation of proceedings (the proposal must be supported by at least one organization other than that which proposed it) shall establish a joint industrial committee which shall work out a draft self-management agreement. The draft text shall be transmitted to all those organizations which have agreed to the initiation of proceedings and the latter shall be required to transmit any comments to the committee within two months. When agreement has been reached on the draft text – in collaboration with the representatives of labour organizations in the committee if comments have been made – it shall be transmitted to the labour organizations for adoption. The draft self-management agreement shall be adopted by the management organs of the labour organizations or by the latter themselves if they do not elect management organs in accordance with the procedure applicable to the adoption of general acts. Organizations which did not take part in the proceedings may become parties to the self-management agreement. The self-management agreement shall replace those parts of the general acts governing mutual labour relations to which it relates. It may also be amended or supplemented by the same procedure. It shall specify the cases and conditions in which it may be terminated or in which the labour organizations may withdraw from it.

III. EMPLOYMENT IN PART-TIME JOBS

Article 15

Article 44 of the Basic Law on Labour Relations notwithstanding the following part-time jobs may be filled by workers engaged in a full-time employment relationship under the conditions and in the manner laid down in the general acts governing the labour organization:

Teaching and teaching assistant posts in institutions of higher education;

Posts involving the duties of a scientific worker . . . in scientific organizations and in scientific units comprising part of the organization.

IV. WORK IN EXCESS OF THE FULL WORKING HOURS

Article 18

Workers shall be required to work in excess of the full working hours in the event of an accident or threat of an accident to the labour organization, but only to the extent necessary to save human lives or material resources.

An accident or threat of an accident to a labour organization shall mean: fire, flood, storm, hailstorm, earthquake, multiple disaster, or illness affecting a great number of workers.

Workers shall also be required to work in excess of the full working hours in the event of a breakdown of equipment or other working facilities, in order to complete a work process whose stoppage might cause considerable financial damage, in order to provide medical care in urgent cases and in order to carry out health protection measures which cannot be carried out during the normal working hours in the event of a multiple disaster or epidemic and other unforeseeable event which directly endangers the life and health of the work force and the property of the labour organization. In such cases, overtime performed in excess of the normal working hours may not exceed the time required to remove or avert any harmful effects.

Article 19

Overtime may only be performed in excess of the normal working hours under article 18 if the

labour organization has laid down in its statutes the cases in which overtime may be performed.

V. WORK DERIVING FROM A CIVIL LAW RELATIONSHIP

Article 20

Labour organizations engaged in forestry, agriculture, hotel management and tourism or maritime transport, and those which carry out geodetic work in the field in the accomplishment of their tasks, which by their nature, being periodic or temporary, do not require the provision of a specific post within the labour organization, may by means of a contract establish a civil law relationship with the workers for the purpose of carrying out operations lasting more than 30 days but not exceeding 60 days within one calendar year.

III. Protection of the war disabled

In 1970 the Assembly of the SR of Bosnia and Herzegovina adopted the Law on the Protection of the War Disabled (*Official Gazette of the SR of Bosnia and Herzegovina*, No. 4/1970). This republican Law and the federal Law on the War Disabled (*Official Gazette of the SFR of Yugoslavia,* No. 49/1965, 23/1967, 54/1967, 59/1967 and 56/1969) and the regulations adopted pursuant to those Laws ensure that war disabled persons and recipients of dependants' war pensions in the SR of Bosnia and Herzegovina exercise their entitlement to disability benefits. Since, under the federal Law, the financial resources to ensure the exercise of entitlement to such benefits under this republican Law and other disability benefits must be financed by the Republic, appropriate provision is made in the budget of the Republic.

War disabled persons and recipients of dependants' war pensions are entitled to a disability allowance if they fulfil the following conditions, in addition to the conditions set forth in the federal Law on the War Disabled:

(1) If their pension does not exceed the sum of 800 dinars per month;

(2) If the recipients of such pensions and the members of their families or close relatives have no income from an agricultural activity or other regular income exceeding 200 dinars per month for each member of the pensioner's household.

War disabled persons are entitled to financial compensation during the period of vocational rehabilitation. The amount of this compensation depends on the degree of the vocational qualifications the war disabled person is to acquire and on his total personal income from an agricultural activity or the other regular income of the war disabled person or members of his family. This compensation amounts to not less than 100 and not more than 500 dinars per month.

A disabled person is entitled to medical care in a health resort where this is justified on medical grounds or where other necessary conditions are fulfilled. The treatment may last from 2 to 42 days, the duration being determined by a Medical Board.

The Law establishes the rules under which war disabled persons may receive prosthetic and orthopaedic appliances and other medical equipment, and the amount of the assistance they are entitled to receive in connexion with the purchase or repair of a motor vehicle, and provides for reimbursement of the costs of food and lodging when a disabled person is away from home in the exercise of his entitlement.

IV. Protection of children

In 1970 the SR of Slovenia adopted the Law concerning a cash benefit for the layette of a new-born child (*Official Gazette of the SR of Slovenia,* No. 46/1970).

Every mother domiciled in the territory of the SR of Slovenia or any parent permanently employed in the Republic is entitled to this form of social assistance, in the amount of 200 dinars, for the layette of a new-born child. In principle, this benefit is payable in advance on presentation of a doctor's certificate stating that the confinement will take place within one month. In the case of children born outside the territory of Slovenia, the benefit is paid on presentation of the child's birth certificate. Entitlement to this benefit may be exercised during the three months following the child's birth.

Such benefits are financed by the republican community for social assistance to children. The organ responsible for the payment of family allowances shall determine entitlement to this benefit. The relevant provisions of the Law on General Administrative Procedure are applicable to the procedure for establishing the admissibility of an application.

V. Legal status of aliens

On 17 June 1970, the Federal Executive Council adopted a decision concerning categories of scientific research work for which aliens require special authorization (*Official Gazette of the SFRY,* No. 27/1970). By this decision, foreign organizations and aliens (hereinafter called aliens) must receive special authorization from the competent organ of the republic if they desire to engage in scientific research work in the territory of Yugoslavia in the following fields: military sciences, earth and environmental sciences, water economy and electric economy, physical and town planning, transport and communications, the application of nuclear energy, biological and social sciences. Aliens may engage in scientific research in such fields only in co-operation with Yugoslav enterprises and institutions or State agencies.

The following two paragraphs of the decision are of great interest in this field as they stipulate

the manner in which authorizations are to be obtained:

"3. Aliens shall submit an application for authorization for scientific research work to the competent organ of the republic through the Yugoslav enterprise or institution or State agency with which they are to co-operate in scientific research.

"Aliens are required to enclose with the application a description of the scientific research project, indicating its aim and the volume of research, the place and duration thereof, and a list of persons who will take part in the research stating the institution where they are employed."

"7. The provisions of this decision shall also apply to scientific research work undertaken by aliens in co-operation with enterprises, institutions or State agencies under the scientific co-operation programmes concluded by Yugoslavia with foreign and international organizations, unless otherwise provided by international conventions."

VI. Constitutional jurisdiction

(Decisions of the constitutional courts published in 1970)

A. CONSTITUTIONAL COURT OF YUGOSLAVIA

(1) Following a request by a worker of the "Sloboda" cement factory at Zagreb, the Constitutional Court of Yugoslavia considered the legality of some of the factory's general acts (regulations governing labour relations, etc.). One factor common to them all was that they limited the rights of workers, as set forth in such acts, on the basis of violations of the obligation to work and measures adopted in connexion therewith. The Constitutional Court decided that "violations of the obligation to work and measures adopted against the worker in that connexion could not justify any limitation of the workers' rights as set forth in the general acts of the labour organization". The Constitutional Court therefore annulled a number of provisions contained in the organization's acts (*Official Gazette of the SFRY*, No. 15/1970).

(2) Two decisions of the Constitutional Court of Yugoslavia related to the legal provisions and general acts of labour organizations concerning the assignment of workers to another workplace. The Basic Law on Labour Relations (*Official Gazette of the SFRY*, No. 12/1970) dealt with that question in article 32.

(a) By a decision of 5 December 1969, the Constitutional Court annulled the provisions of the regulations governing the labour relations of one enterprise under which a worker could, if the production process so required, be assigned to another workplace if his qualifications did not correspond to those required for the post, in other words, if he did not perform his work satisfactorily in his previous workplace. In fact the Law provides that the labour organization itself should determine the conditions and the procedure for assigning workers to another workplace, but only within the limits of article 32 of the Law. The Court therefore concluded: "The Law explicitly states that assignment to another workplace can only be effected if the workplace to which the worker is assigned corresponds to the latter's professional qualifications. The assignment of a worker without his consent, on a permanent basis, can only be effected on that condition". Under the above-mentioned provision, that condition is inapplicable only in the case of the temporary assignment of a worker in the event of exceptional circumstances within the labour organization as defined in the general act of the enterprise. The provisions of article 43 of the above-mentioned regulations are not in conformity with the provisions of article 32 of the Basic Law on Labour Relations because they provide that a worker can be transferred from one workplace to another without regard to the conditions set forth in the law concerning the worker's professional qualifications or level of training in a given occupation (*Official Gazette of the SFRY of Yugoslavia*, No. 5/1970).

(b) On 5 October 1970 the Constitutional Court of Yugoslavia annulled the provisions of a decision of a labour organization by which a worker could be transferred from one workplace to another in the event that, for personal reasons, he came into conflict with other workers and was unable to co-operate with other workers when such co-operation was essential. The reasons for the decision being annulled are as follows: "The provisions of paragraph 2 of the decision in question concerning the assignment of a worker to another workplace when, for personal reasons, he comes into conflict with other workers and is unable to co-operate with other workers when such co-operation is essential incorrectly represent the intention to include the worker's personal qualities but not the 'circumstances', which is understood to mean the objective situation surrounding the worker. More important than that situation, these circumstances, which are in fact the man's working ability and his behaviour in the environment in which he works, can not as such be the reason for his transfer to another workplace unless they are identified precisely and assessed objectively with the worker having the right to contest the statements of the competent management organs. Otherwise, the assessment of personal circumstances may give rise to an arbitrary interpretation inconsistent with the situation and rights of workers in a self-management labour organization" (*Official Gazette of the SFRY*, No. 56/1970).

B. CONSTITUTIONAL COURT OF CROATIA

Under article 36 (2) of the regulations of the "Pomgrad" naval construction enterprise of Split, foreign section, of 14 February 1968, workers who

arbitrarily leave the section or who, on being transferred to executive workplaces, do not report for work at the established time, shall not be entitled to salary adjustment for the preceding financial year. The Constitutional Court of Croatia annulled these provisions of article 36 (2) of the regulations, on the grounds that they were contrary to the provisions of article 17 of the Constitution of the SR of Croatia. This article of the Constitution provides that, in accordance with the principle of distribution of income according to the work performed, every worker shall be entitled to a personal income corresponding to the results of his work and the production unit and the labour organization as a whole. The Court concluded that article 36 (2) of the regulations limited a worker's entitlement to participate in the distribution of personal income for work performed during the preceding year by depriving him of the right to upward adjustment of personal income on the basis of the results of the labour organization's operations. The provision is not in conformity with article 17 of the Constitution of the SR of Croatia since it limits the right of workers to participate in the distribution of resources allocated to personal income, in accordance with work performed (*Official Gazette of the SR of Croatia*, No. 42/1970).

VII. International Agreements

Listed below are the human rights conventions notice of whose ratification by Yugoslavia was published in 1970 in the *Supplement to the Official Gazette of the SFR of Yugoslavia – International Treaties and other agreements* (hereinafter referred to in the text as: *Official Gazette of the SFRY, International Treaties*).

(1) *Bilateral agreements*

(a) Agreement between the Government of the SFR of Yugoslavia and the Government of the Republic of San Marino on the abolition of visas, signed on 22 September 1967 at Belgrade, and ratified on 15 November 1967 (*Official Gazette of the SFRY, International Treaties*, No. 22/1970).

(b) Agreement on the mutual abolition of fees for visas between Yugoslavia and Australia, signed on 13 June 1969 at Belgrade, and ratified on 25 June 1969 (*Official Gazette of the SFRY, International Treaties*, No. 22/1970).

(c) Convention amending the Convention on Social Security between Yugoslavia and Belgium, signed at Belgrade on 1 November 1954. The Convention was signed on 11 March 1968 at Brussels and ratified on 21 May 1969 (*Official Gazette of the SFRY, International Treaties*, No. 34/1970).

(d) Agreement on the abolition of visas between the Benelux countries and Yugoslavia, concluded at Belgrade on 17 June 1969, and ratified on 25 June 1969 (*Official Gazette of the SFRY, International Treaties*, No. 35/1970).

(e) Agreement concerning the abolition of visas between Yugoslavia and the United Kingdom of Great Britain and Northern Ireland, concluded by an exchange of notes of 29 April 1969 at Belgrade (*Official Gazette of the SFRY, International Treaties*, No. 38/1970).

(f) Agreement on the mutual abolition of visas between Yugoslavia and Pakistan, concluded by an exchange of notes at Belgrade on 21 April 1970, and ratified on 29 April 1970 (*Official Gazette of the SFRY, International Treaties*, No. 51/1970).

(g) Agreement on the mutual abolition of visas between Yugoslavia and Iran, concluded at Teheran on 14 April 1970, and ratified on 20 May 1970 (*Official Gazette of the SFRY, International Treaties*, No. 56/1970).

(2) *Multilateral agreements*

(a) International Sanitary Regulations, adopted at the IVth World Health Assembly in 1951, supplemented and amended at the VIIIth, IXth, XIIIth, XVIth and XVIIIth World Health Assemblies in 1955, 1956, 1960, 1963 and 1965 respectively, and ratified on 4 June 1969 (*Official Gazette of the SFRY, International Treaties*, No. 17/1970).

(b) 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 on 26 March 1969 (*Official Gazette of the SFRY, International Treaties*, No. 40/1970).

(c) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted in New York on 26 November 1968, and ratified on 4 March 1970 (*Official Gazette of the SFRY, International Treaties*, No. 50/1970).

(d) Convention No. 119 of the International Labour Organisation concerning the Guarding of Machinery, adopted on 25 June 1963 in Geneva, and ratified on 9 July 1969 (*Official Gazette of the SFRY, International Treaties*, No. 54/1970).

ZAMBIA[1]

THE LOCAL GOVERNMENT ELECTIONS ACT, 1969

Act No. 1 of 1970, assented to on 9 January 1970[2]

art II

Local Government Electoral Commission

3. (1) There is hereby established a Local Government Electoral Commission (hereinafter in this Act referred to as "the Commission") for the purpose of supervising the conduct of elections held under this Act.

. . .

Part III

Delimitation of wards

10. (1) Not later than six months after the appointment of the members of the Commission under subsection (2) of section *three*, and whenever thereafter it is necessary to do so to give effect to the provisions of this section, the Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries thereof by reference to polling districts, and assigning names thereto.

. . .

Part IV

Holding of elections and tenure of office of councillors

11. (1) An ordinary election of councillors in every ward of every council throughout Zambia shall be held in 1970, and in every third year thereafter, on such date as the President shall, by statutory order, prescribe:

Provided that a poll shall not be taken in any ward in respect of which only one candidate is validly nominated for election.

. . .

12. (1) Subject to the provisions of this section, a by-election to fill a casual vacancy in the office of a councillor shall be held on such date as the Commission may, by statutory order, prescribe, being a date not later than 90 days after the occurrence of the vacancy:

Provided that a poll shall not be taken in any by-election in respect of which only one candidate is validly nominated for election.

. . .

Part V

Qualification of voters

14. (1) Subject to the provisions of this Act, every person who, at the time when any election is held in any ward under this Act, is registered in a register of voters relating to any polling district in such ward shall be entitled to vote at such election in the prescribed manner.

(2) Every person shall, whenever he wishes to vote at an election under this Act, identify himself to an election officer in such manner as may be prescribed and no person shall be entitled to vote more than once at any such election.

15. No person shall be entitled to vote at an election under this Act who:

(a) Has been convicted of any corrupt practice or illegal practice within a period of five years preceding that election;

(b) Has been reported guilty of any corrupt practice or illegal practice by a court upon the trial of an election petition under this Act within a period of five years preceding that election; or

(c) Is in lawful custody at the date of that election.

Part VI

Qualification of councillors

16. Subject to the provisions of section *seventeen*, a person shall be qualified for election as a councillor of any council if, and shall not be qualified to be so elected unless:

(a) He is a citizen of Zambia; and

(b) He has attained the of age of 21 years; and

(c) He is ordinarily resident in the area of that council.

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[1] Texts furnished by the Government of Zambia.

[2] *Supplement to the Republic of Zambia Government Gazette*, 12 January 1970.

17. (1) A person shall not be qualified for election as a councillor if:

(a) He is, under any law in force in Zambia, adjudged or otherwise declared to be of unsound mind; or

(b) He is under sentence of death imposed on him by any court in Zambia or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(c) He is an undischarged bankrupt, having been adjudged or ortherwise declared bankrupt under any law in force in Zambia, or has made a composition or arrangement with his creditors and has not paid his debts in full; or

(d) He has been surcharged under the Local Government Act, 1965, in an amount exceeding 100 kwacha and a period of five years has not elapsed since the date on which he was so surcharged; or

(e) His freedom of movement is restricted or he is detained under the authority of any law in force in Zambia; or

(f) He is a member of the National Assembly; or

(g) He is an officer or employee of a council; or

(h) He is an election officer.

(2) Any person who is convicted of any corrupt practice or illegal practice or who is reported guilty of any corrupt practice or illegal practice by a court upon the trial of an election petition under this Act, shall not be qualified to be nominated for election as a councillor for a period of five years from the date of such conviction or of such report, as the case may be.

(3) In this section, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a setence of imprisonment imposed in default of payment of a fine.

Part VII

Election petitions

18. (1) No election of a candidate as a councillor shall be questioned except by an election petition presented under this Part.

. . .

19. An election petition may be presented to the court by one or more of the following persons:

(a) A person who lawfully voted or had a right to vote at the election to which the election petition relates;

(b) A person claiming to have had a right to be nominated as a candidate or elected as a councillor at the election to which the election petition relates;

(c) A person alleging himself to have been a candidate at the election to which the election petition relates;

(d) The Attorney-General.

. . .

24. (1) A petitioner shall not withdraw an election petition without the leave of the court.

. . .

27. (1) Subject to the provisions of this Act, every election petition presented under this Act shall be tried and determined by the court.

(2) An election petition shall be tried in open court.

. . .

THE LANDS ACQUISITION ACT, 1969

Act No. 2 of 1970, assented to on 9 January 1970[3]

. . .

Part II

Compulsory acquisition

3. Subject to the provisions of this Act the President may, whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do, compulsorily acquire any property of any description.

. . .

Part III

Compensation

10. Subject to the provisions of this Act, where any property is acquired by the President under this Act the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation in money as may be agreed or, in default of agreement, determined in accordance with the provisions of this Act:

Provided that where the property acquired is land the President may, with the consent of the person entitled to compensation, make to such

[3] *Ibid.* Act not in operation pending appointment by statutory order of the President.

person, in lieu of or in addition to any compensation payable under this section, a grant of State land not exceeding in value the value of the land acquired, for an estate not exceeding the estate acquired and upon the same terms and conditions, as far as may be practicable, as those under which the land acquired was held.

11. (1) If within six weeks after the publication in the *Gazette* under section *seven* of the notice to yield up possession there remains outstanding any dispute relating to or in connexion with the property, other than a dispute as to the amount of compensation, the Minister or any person claiming any interest in the property may institute proceedings in the Court for the determination of such dispute.

(2) Where any dispute arises as to the amount of compensation the Minister or any person claiming to be entitled to compensation may, and shall if such dispute is not settled within the aforementioned period of six weeks, refer such dispute to the National Assembly which shall be resolution determine the amount of compensation to be paid.

(3) No compensation determined by the National Assembly under this Act shall be called in question in any court on the grounds that it is not adequate.

...

14. (1) The decision of the Court (or, in the case of an appeal, the Court of Appeal) shall be final and conclusive as between all the parties to the proceedings in question.

...

(3) For the purpose of this section the date of the final decision means the date of the passing of the resolution of the National Assembly referred to in section *eleven* or the date of the judgment of the Court or the Court of Appeal, as the case may be.

...

Part VI

Compensation Advisory Board

21. There is hereby established a board, to be known as the Compensation Advisory Board (hereinafter referred to as the Board), to advise and assist the Minister in the assessment of any compensation payable under this Act.

...

THE PENAL CODE (AMENDMENT) ACT, 1970

Act No. 39 of 1970, assented to on 28 August 1970[4]

...

2. Section *seven* of the Penal Code is repealed and the following section is substituted therefor:

7. (1) Subject to subsection (3), a citizen of Zambia who does any act outside Zambia which, if wholly done within Zambia, would be an offence against this Code, may be tried and punished under this Code in the same manner as if such act had been wholly done within Zambia.

(2) When an act which, if wholly done within Zambia, would be an offence against this Code, is done partly within and partly outside Zambia, any person who within Zambia does any part of such act may be tried and punished under this Code as if such act had been wholly done within Zambia.

(3) Nothing in subsection (1) shall render any person liable to be tried and punished under this Code in respect of any act done outside Zambia which, if wholly done within Zambia, would be an offence against this Code if such person has been convicted and punished outside Zambia in respect of the same act, but, save as aforesaid, any such conviction shall, for the purposes of any law including this Code, be deemed to be a conviction for the said offence against this Code.

...

[4] *Ibid.*, 4 September 1970.

THE REFUGEES (CONTROL) ACT, 1970

Act No. 40 of 1970, assented to on 28 August 1970[5]

...

3. (1) Subject to the provisions of subsection (2), the Minister may declare, by order, any class of persons who are, or prior to their entry into Zambia were, ordinarily resident outside Zambia to be refugees for the purposes of this Act.

(2) A declaration under subsection (1) shall not apply to:

(a) A citizen of Zambia;

(b) Any person entitled in Zambia to diplomatic immunity;

(c) Any person in the employment of any state, government or local authority outside Zambia, or of any organisation to which section *four* of the Diplomatic Immunities and Privileges Act, 1965, applies, who enters Zambia in the course of his duties;

(d) Any member of a class of persons declared by the Minister, by order, not to be refugees for the purposes of this Act.

(3) If any question arises in any proceedings, or with reference to anything done or proposed to be done, under this Act as to whether any person is a refugee or not, or is a refugee of a particular category or not, the onus of proving that such person is not a refugee or, as the case may be, is not a refugee of a particular category, shall lie upon that person.

4. (1) The Minister may declare any part of Zambia to be an area for the reception or residence of any refugees or category thereof.

(2) The Minister may establish in any reception area a refugee settlement for refugees or any category thereof, and may appoint a refugee officer to be in charge of such settlement.

5. (1) The Minister may, by order in writing:

(a) Direct that any refugee entering or leaving Zambia shall enter or leave by specified routes or at specified places;

(b) Direct that any refugee moving from one part of Zambia to another shall move by specified routes.

...

6. (1) Every refugee shall, within such period as may be prescribed, present himself for registration under this section in such manner and to such authority as may be prescribed.

...

10. (1) The Minister may at any time order any refugee to return by such means or route as he shall direct to the territory from which he entered Zambia.

...

11. (1) No refugee shall remain in Zambia;

(a) Unless within seven days of his entering Zambia he is issued with a permit to remain by an authorized officer;

(b) Unless he complies with the terms or conditions from time to time annexed to such permit by an authorized officer.

(2) An authorized officer shall not refuse a refugee a permit under this section if the officer has reason to believe that the refusal of a permit will necessitate the return of the refugee to the territory from which he entered Zambia and that the refugee may be tried, or detained or restricted or punished without trial, for an offence of a political character after arrival in that territory or is likely to be the subject of physical attack in that territory; but, save as aforesaid, such authorized officer may in his discretion and without assigning any reason refuse to issue a permit.

(3) If a refugee fails to obtain or is refused a permit in accordance with this section, his presence in Zambia shall be unlawful.

12. (1) The Minister may:

(a) By order, require any refugee to reside within a reception area or refugee settlement;

(b) Require any refugee who is within a reception area or refugee settlement to remove to and reside in some other place being a reception area or refugee settlement.

...

13. (1) The Minister may make rules, and the Commissioner may issue directions not inconsistent with such rules, for the control of refugee settlements and, without prejudice to the generality of the foregoing, such rules and directions may make provision in respect of all or any of the following matters:

(a) The organisation, safety, discipline and administration of such settlements;

(b) The reception, treatment, health and well-being of refugees;

(c) The powers of refugee officers in respect of such settlements.

...

14. (1) No person other than a refugee required to reside or residing in, or a person employed in, a refugee settlement, shall enter or be within such settlement except with the general or special permission of the Minister, the Commissioner or a refugee officer.

---

[5] *Ibid.*

(2) No person other than the Commissioner or a refugee officer may in a refugee settlement address an assembly or meeting of more than 10 refugees whether or not such meeting is held in a public place.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act.

16. (1) An authorized officer may arrest without warrant any refugee reasonably suspected by the authorized officer of having committed or attempted to commit an offence against this Act.

(2) An authorized officer and any person acting with the authority of an authorized officer may use such force, including the use of firearms, as may be reasonably necessary to compel any refugee to comply with any order or direction made or given under this Act in relation to such refugee.

17. No act or thing done or omitted to be done by any authorized officer or other person shall, if the act or omission was done or omitted *bona fide* while acting in the execution of his duty under this Act, subject him personally to any liability, action, claim or demand whatsoever.

THE PENAL CODE (AMENDMENT) (No. 2) ACT, 1970

Act No. 61 of 1970, assented to on 24 December 1970[6]

2. Section *one hundred and fifty-six* of the Penal Code is repealed and the following section is substituted therefor:

156. (1) Any person who:

(a) Makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals; or

(b) Imports, conveys or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

(c) Carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or

(d) Advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or

(e) Publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals;

is guilty of a misdemeanour and is liable to imprisonment for five years or to a fine of not less than 1,000 kwacha nor more than 5,000 kwacha.

(2) If, in respect of any of the offences specified in paragraphs *(a)*, *(b)*, *(c)* or *(d)* of subsection (1), any constituent element thereof is committed in Zambia such commission shall be sufficient to render the person accused of such offence triable therefor in Zambia.

(3) A court, on convicting any person of an offence against this section, may order to be confiscated or destroyed any matter or thing made, possessed or used for the purpose of such offence.

(4) A court may, on the application of a public prosecutor, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing.

(5) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

[6] *Ibid.*

THE CO-OPERATIVE SOCIETIES ACT, 1970

Act No. 63 of 1970, assented to on 19 December 1970[7]

Part II

Responsibilities of the Minister

3. The Minister shall take such measures as he deems advisable for the encouragement generally of co-operative development for economic, social and cultural purposes and human advancement on the basis of self-help and, in particular, but without limiting the generality of the foregoing, for the encouragement of the organisation of co-operative societies as a means of:

(a) Improving the economic situation of their members;

(b) Contributing to the economy an increased measure of democratic control of economic activity;

(c) Increasing personal and national capital resources by the encouragement of thrift, the prevention of usury and the wise use of credit;

(d) Increasing incomes and employment by a fuller utilisation of resources, including the bringing of new land into productive use, the marketing and processing of agricultural and natural products, the development of local industries, and processing of raw materials;

(e) Improving social and cultural conditions and, where appropriate, providing supplementary services in housing, health, education and communications;

(f) Raising the level of general and technical knowledge of members of societies.

...

[7] *Ibid.*

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

NOTE[1]

TRUST TERRITORY OF NEW GUINEA

Under the Administration of Australia

I. Legislation

A. EQUAL RIGHTS IN MARRIAGE

(Universal Declaration, article 16)

The *Law Reform (Husband and Wife) Ordinance*, 1970 (No. 19 of 1970) of the Territory of Papua and New Guinea abolishes the rule that one spouse may not sue the other in tort and gives to each of the parties to a marriage a like right of action in tort against the other as if they were not married. It provides, however, that the Court may stay the action if it appears that no substantial benefit would accrue to either party from the continuation of the proceedings.

B. JUST AND FAVOURABLE CONDITIONS OF WORK

(Universal Declaration, articles 23, 25)

The *Workers' Compensation (Entitlements) Ordinance*, 1969 (No. 3 of 1970) of the Territory of Papua and New Guinea increases the benefits payable by way of workers' compensation to a level comparable with that existing in the Commonwealth of Australia. In addition, provision is made for the appointment of a Commissioner for Workers' Compensation.

C. RIGHT TO EDUCATION

(Universal Declaration, article 26)

The *Education (Papua and New Guinea) Ordinance*, 1970 (No. 48 of 1970) of the Territory of Papua and New Guinea provides for an education system for the Territory, designed to achieve a higher standard of education, a competent body of teachers, the most effective use of money allocated to education and a satisfactory way of managing the education system both for the present and for the time when the country attains self-government.

[1] Note furnished by Mr. I. O. Clark, government-appointed correspondent, Canberra.

II. Court decisions

FAIR TRIAL

(Universal Declaration, article 10)

Right to cross-examine and to call witnesses

"I have formed in this case a clear view that there has been a substantial miscarriage of justice and that this appeal should be allowed and I can state my reasons quite shortly. The appellant was in my opinion deprived of the right to properly conduct his defence in two important respects. In the first place, due I think to an unfortunate though a natural misunderstanding on the part of the Magistrate, the appellant was not permitted to cross-examine the victim Tobaining at all. There was a clear breach here of Section 137 of the District Courts Ordinance and it cannot be said that the appellant would not have elicited material favourable to his case had he been able to exercise his right. Secondly, he was unable to seek or call a witness in his defence. He had been in custody for some time and had no legal representation. In such circumstances I think great care should be taken by the Court to ensure that a defendant to a criminal information is able to properly present his case. In the event, now that the appellant has been able to obtain legal representation the sort of exculpatory evidence which he suggested was available to him has been procured. The question now is whether I should remit the case for re-hearing. After some anxious consideration I do not think that I should. It seems to me that had the learned Magistrate had before him the evidence of which I have had the advantage of hearing and reading it must have been sufficient to raise a reasonable doubt, indeed a strong doubt, in his mind as to the guilt of the appellant. Whilst I do not think that the case of *The Queen* v. *Bailey* (1956) S.A.S.R. 153 lays down any general principle with regard to new trials, like their Honours of the Full Court of South Australia in that case I think that I can approach the question by considering what are the probabilities with respect to the result in the event of a new trial. The probabilities in my view point to a lack of firm conviction that the appellant was inciting the violence which he maintained he was endeavouring to prevent. And so I would not only allow his

appeal but quash his conviction and sentence for the reasons I have endeavoured to state." — Minogue, A. C. J. in *Kereku* v. *Dodd,* Supreme Court of the Territory of Papua and New Guinea — not yet reported.

Prohibition against self-incrimination

"In the circumstances of the Territory, I feel that a gross abuse of process is involved where a native who is a participant in a joint crime and who belongs to the class to which I next refer is called to give evidence and to incriminate himself. No amount of warnings against self-incrimination can possibly cure the situation.

"I must regard the procedure as an abuse because, unless prosecutors are compelled to treat it as such, the door is left wide open to them to call, in the committal proceedings relating to an offence which is committed in a group, the evidence of any one or more of the participants. In such a case, the persuasiveness of the District Court evidence is more likely than not to induce further self-incriminating statements made to the magistrate at the close of the committal proceedings which will become evidence at the trial.

"There is a widespread class of people in this Territory who must be granted the protection of the courts in this regard and that includes the two men who are involved in this case; such people are unsophisticated, ignorant, backward, generally primitive; they are not capable of understanding what is a right, let alone estimate the extent of any such right; they cannot themselves look after their rights; they are not represented; unless the magistrate does so, they are not in any way protected; they are wide open to suggestion or pressure especially if it comes from the magistrate or appears to have his approval; they are psychologically, for all practical purposes, unable to do other than what these two particular people have done, that is incriminate themselves in breach of all the rules of law which operate to protect them from being required to do that.

"I consider that the present case, taken in conjunction with what happened to BOGON in his turn, goes far beyond the mere irregularity that evidence has been given at the committal proceedings by an incompetent witness: it goes to the right and privilege of a person against whom a charge is pending not to be called by the prosecution to give evidence upon the subject matter of the charge so pending.

"The fact that this has occurred in respect of SIMBENE has prejudiced his fair trial and it follows in my view that the indictment based upon the committal proceedings against him in their relation to the associated proceedings against BOGON cannot but have the effect of prejudicing or embarrassing SIMBENE within the meaning of Section 596 of the Code.

"The motion to quash the indictment is allowed." — O'Loghlen, A. J. in *R.* v. *Simbene Dandemb,* Supreme Court of the Territory of Papua and New Guinea (not yet reported).

B. Non-Self Governing Territories

NOTE[1]

TERRITORY OF PAPUA

Under the Administration of Australia

The Ordinances described above in the information relating to the Trust 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, government-appointed correspondent, Canberra.

GILBERT AND ELLICE ISLANDS

Under the administration of the United Kingdom of Great Britain and Northern Ireland

THE GILBERT AND ELLICE ISLANDS ORDER 1970

Made on 11 November 1970[1]

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

4. Whereas every person in the Colony is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

(a) Life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

5. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law in force in the Colony 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.

6. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:

(a) In consequence of his unfitness to plead to a criminal charge;

[1] Text published by Her Majesty's Stationery Office in 1971 in *Statutory Instruments 1970*, Part III, Section 2, pp. 6765-6801.

(b) In execution of the sentence or order of a court, whether established for the Colony or some other country, in respect of a criminal offence of which he has been convicted;

(c) In execution of the order of a court of record punishing him for contempt of that court or of a court inferior to it;

(d) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(e) For the purpose of bringing him before a court in execution of the order of a court;

(f) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in the Colony;

(g) In the case of a person who has not attained the age of eighteen years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;

(h) For the purpose of preventing the spread of an infectious or contagious disease;

(i) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(j) For the purpose of preventing the unlawful entry of that person into the Colony, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Colony or for the purpose of restricting that person while he is being conveyed through the Colony in the course of his extradition or removal as a convicted prisoner from one country to another; or

(k) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within the Colony or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of the Colony in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained:

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in the Colony,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained upon reasonable suspicion of his having committed or being about to commit a criminal offence 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.

7. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include:

(a) Any labour required in consequence of the sentence or order of a court;

(b) Any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) Any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

8. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the Colony immediately before the coming into operation of this Order.

9. (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 or 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 High 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) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section:

(a) To the extent that the law in question makes provision for the taking of possession or acquisition of any property:

(i) In satisfaction of any tax, rate or due;

(ii) By way of penalty for breach of the law or forfeiture in consequence of a breach of the law;

(iii) As an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) In the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) In circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) In consequence of any law with respect to the limitation of actions or acquisitive prescription; or

(vii) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon:

(A) Of work of soil conservation or of conservation of other natural resources; or

(B) Of work relating to agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) To the extent that the law in question makes provision for the taking of possession or acquisition of:

(i) Enemy property;

(ii) Property of a deceased person, a person of unsound mind, a person who has not attained the age of twenty-one years or a person who is absent from the Colony, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) Property of a person declared to be insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) Property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(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 for public purposes by any law and in which no moneys have been invested other than moneys provided by the Government of the Colony.

10. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) For the purpose of protecting the rights or freedoms of other persons;

(c) For the purpose of authorizing an officer or agent of the Government of the Colony, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;

(d) For the purpose of authorizing the entry upon any premises in pursuance of an order of a court for the purpose of enforcing the judgment or order of a court in any proceedings; or

(e) For the purpose of authorizing the entry upon any premises for the purpose of preventing or detecting criminal offences,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established or recognized by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last preceding subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:

(a) May by law be empowered 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 decency, 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 so to do in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:

(a) 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 reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) Subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section:

"Criminal offence" means a criminal offence under the law in force in the Colony;

"Legal representative" means a person lawfully in, or entitled to be in, the Colony and entitled to practise in the Colony as an advocate or, except in relation to proceedings before a court in which a solicitor has no right of audience, as a solicitor.

12. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private to manifest and propagate his religion or belief in worship, teaching practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(4) Except with his own 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.

(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 section to the extent that the law in question makes provision which is reasonably required:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

13. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or

(c) That imposes restrictions upon police officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

14. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to 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) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the rights or freedoms of other persons; or

(c) That imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

15. (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout the Colony, the right to reside in any part of the Colony, the right to enter the Colony and immunity from expulsion from the Colony.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention

shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) For the imposition of restrictions on the movement or residence within the Colony of any person or on any person's right to leave the Colony that are reasonably required in the interests of defence, public safety or public order;

(b) For the imposition of restrictions on the movement or residence within the Colony or on the right to leave the Colony of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health;

(c) For the imposition of restrictions on the movement or residence within the Colony of any person who does not belong to the Colony or the exclusion or expulsion from the Colony of any such person;

(d) For the imposition of restrictions on the acquisition or use by any person of land or other property in the Colony;

(e) For the imposition of restrictions upon the movement or residence within the Colony of public officers;

(f) For the removal of a person from the Colony to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in that other country in execution of the sentence of a court in respect of a criminal offence under the law in force in the Colony of which he has been convicted; or

(g) For the imposition of restrictions, by order of a court, on the movement or residence within the Colony of any person or on any person's right to leave the Colony either in consequence of his having been found guilty of a criminal offence under the law of the Colony or for the purpose of ensuring that he appears before a court at a later date for trial or for proceedings relating to his extradition or lawful removal from the Colony.

(4) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in subsection (3) *(a)* of this section so requests at any time during the period of that restriction not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be admitted to practise as an advocate or solicitor in the Colony, appointed by the Chief Justice.

(5) On any review by a tribunal in pursuance of the last preceding subsection of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

16. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting, 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 imposition of taxation or the appropriation of revenue by the Government of the Colony or any local authority or body for local purposes;

(b) With respect to persons who do not belong to the Colony;

(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;

(d) With respect to land, the tenure of land, the resumption and acquisition of land and other like purposes; or

(e) Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a local authority or any office in a body corporate established directly by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 10, 12, 13, 14 and 15 of this Order, being such a restriction as is authorized by section 10 (2), 12 (6), 13 (2), 14 (2) or 15 (3), 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 Order or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section:

(a) If that law was in force immediately before the coming into operation of this Order and has continued in force at all times since the coming into operation of this Order; or

(b) To the extent that the law repeals and re-enacts any provision which has been contained in any enactment at all times since immediately before the coming into operation of this Order.

17. (1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939 as amended shall be held to be inconsistent with or in contravention of section 6, 7 (2), 10, 12, 13, 14, 15 or 16 of this Order to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorizes the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during the 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 last preceding subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person qualified to be admitted to practise as an advocate or solicitor in the Colony, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

18. (1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 4 to 17 (inclusive) of this Order has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction:

(a) To hear and determine any application made by any person in pursuance of the last preceding subsection;

(b) To determine any question arising in the case of any person which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such direction, as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 4 to 17 (inclusive) of this Order:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 4 to 17 (inclusive) of this Order, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Fiji Court of Appeal:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

...

(6) Rules of court making provision with respect to the practice and procedure of the High Court in relation to the jurisdiction conferred on it by or under this section (including rules with respect to the time within which any application or reference shall or may be made or brought) may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

...

Chapter VI

THE LEGISLATIVE COUNCIL

Composition

42. ... there shall be a Legislative Council which shall consist of:

...

(c) Twenty-eight elected members who shall be directly elected in such manner as may be prescribed by regulations made by the Resident Commissioner,[2] acting in his discretion.

43. For the purpose of the election of the elected members of the Legislative Council, the Colony shall be divided into electoral districts having such boundaries and such number of elected representatives as may be prescribed by or under regulations made under section 42*(c)* of this Order.

44. Subject to the provisions of the next following section, a person shall be qualified to be elected as an elected member of the Legislative Council if, and shall not be so qualified unless:

(a) He is a British subject or a British protected person;

(b) He has attained the age of twenty-one years; and

(c) He has resided in the Colony during the three years immediately preceding the date of his election for a period or periods amounting in the aggregate to not less than thirty months, or is domiciled in the Colony and is resident there at that date.

45. (1) No person shall be qualified to be elected as an elected member of the Legislative Council who:

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

(b) Has been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth and has not been discharged;

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

(d) 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) for a term of or 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;

(e) Is disqualified from membership of the Council under any law for the time being in force in the Colony relating to offences connected with elections;

(f) Holds, or is acting in, any office the functions of which involve any responsibility for, or in connexion with, the conduct of any election or the compilation or revision of any electoral register; or

(g) Subject to such exemptions as may be prescribed by any law in force in the Colony, holds, or is acting in, any public office.

(2) For the purposes of paragraph *(d)* of the last preceding 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; 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.

[2] As stated in section 22.(1) of the Order, the Resident Commissioner "shall be appointed by the High Commissioner in pursuance of instructions given by Her Majesty".

SEYCHELLES

Under the administration of the United Kingdom of Great Britain and Northern Ireland

THE SEYCHELLES ORDER 1970

Made on 30 September 1970*

PART II

The Governor

4. There shall be a Governor and Commander-in-Chief of Seychelles who shall be appointed by Her Majesty by commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

10. (1) The Governor, acting in his discretion, may, in Her Majesty's name and on Her Majesty's behalf:

(a) Grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;

(b) Grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(c) Substitute a less severe form of punishment for any punishment imposed on any person for any offence; and

(d) Remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) The provisions of this section shall not apply in relation to any conviction by a court-martial established under any Act of Parliament, any punishment imposed in respect of any such conviction or any penalty or forfeiture due under any such Act.

11. (1) There shall be an Advisory Committee on the prerogative of mercy which shall consist of:

(a) The Attorney-General; and

(b) Not less than two nor more than four other members appointed by the Governor by instrument in writing under his hand, of whom one shall be a person qualified to practise in Seychelles as a medical practitioner.

(2) A member of the Committee appointed under subsection (1) *(b)* of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant if the Governor, by instrument in writing under his hand, so directs.

(3) The Committee shall not be summoned except by the authority of the Governor who shall, so far as is practicable, attend and preside at all meetings of the Committee, and, in his absence such member as the Governor may appoint shall preside.

(4) The Committee shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Committee at any time, and the validity of any proceedings of the Committee shall not be affected by reason only that some person who was not entitled to do so took part therein.

(5) Subject to the provisions of this section the Committee may regulate its own procedure.

(6) The powers of the Governor under this section shall be exercisable by him in his discretion.

12. (1) Where any person has been sentenced to death for any offence, the Governor shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee on the prerogative of mercy; and after obtaining the advice of the Committee he shall decide in his own judgment whether or not to exercise any of his powers under section 10 of this Order.

(2) The Governor may refer to the Advisory Committee on the prerogative of mercy any other case in which it appears to him desirable to obtain the advice of the Committee on the exercise of his powers under section 10 of this Order.

13. (1) The Governor, in the name and on behalf of Her Majesty, may constitute such offices for Seychelles as may be lawfully constituted by Her Majesty and may abolish any office so constituted by him.

(2) Subject to the provisions of this Order, the Governor, acting in his discretion, may:

(a) Make appointments (including appointments on promotion or transfer) to any office so

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(* Text published by Her Majesty's Stationery Office in 1971 in *Statutory Instruments 1970*, Part III, Section 2, pp. 6728-6761.

constituted by him or to any public office established by or under any law; and

(b) Dismiss, or suspend from the exercise of the functions of his office, any public officer or take such other disciplinary action as he may think fit with respect to such a person.

(3) A person appointed to an office constituted under this section or to any public office established by or under any law shall, unless it is otherwise provided by law, hold office during Her Majesty's pleasure.

(4) The Governor, acting in his discretion, may, by writing under his hand, delegate to any public officer, subject to such conditions as he may specify, any of his powers under subsection (2) of this section relating to appointments to public offices or the dismissal, suspension or the taking of disciplinary action with respect to public officers.

...

PART III

The Executive

16. (1) There shall be a Council of Ministers in and for Seychelles which shall consist of:

(a) The Chief Minister;

(b) Such number of other Ministers (not exceeding four) as the Governor, acting after consultation with the Chief Minister, may determine; and

(c) The Deputy Governor, the Attorney-General and the Financial Secretary, who shall be ex-officio members of the Council.

...

PART IV

The Legislature

Composition

28. There shall be a Legislative Assembly, which shall consist of:

(a) The Speaker;

(b) Three ex-officio members, namely the Deputy Governor, the Attorney-General and the Financial Secretary; and

(c) Fifteen elected members who shall be directly elected in such manner as may be prescribed by regulations made by the Governor acting in his discretion.

29. (1) For the purpose of the election of the elected members of the Legislative Assembly Seychelles . . . shall be divided into eight electoral areas having such boundaries as may be prescribed by or under regulations made under the preceding section.

(2) Each of the electoral areas mentioned in subsection (1) of this section shall return two elected members to the Assembly, except that comprising La Digue and the inner islands . . . which shall return one member only.

(3) The qualifications and disqualifications for registration as a voter in any election of members of the Assembly shall be as set out in Schedule 4 to this Order.

30. Subject to section 31 of this Order, a person shall be qualified to be elected as a member of the Legislative Assembly 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) Has resided in Seychelles for a period of, or periods amounting in the aggregate to, not less than twenty-four months before the date of his nomination for election;

(c) Is registered or qualified to be registered as a voter at elections to the Assembly; and

(d) Is able to speak, and, unless incapacitated by blindness or other physical cause, to read the English language with sufficient proficiency to enable him to take part in the proceedings of the Assembly.

31. (1) No person shall be qualified to be elected as an elected member of the Legislative Assembly who:

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

(b) Has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;

(c) Is under sentence of death imposed on him by a court of law having jurisdiction in Seychelles, or is serving a sentence of imprisonment (by whatever name called) of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such sentence of imprisonment the execution of which has been suspended;

(d) Is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of Seychelles for or on account of the public service, and has not, within the period of one month immediately preceding the nomination day published in the English language in the *Gazette* and in a newspaper circulating in Seychelles, a notice setting out the nature of such contract, and his interest, or the interest of any such firm or company, therein; or

(e) Is a person adjudged or otherwise declared to be of unsound mind under any law for the time being in force in Seychelles or detained as a criminal lunatic;

(f) Holds, or is acting in, any public office;

(g) Is disqualified for election by any law in force in Seychelles by reason of his holding, or acting in, any office the functions of which involve:

(i) Any responsibility for, or in connexion with, the conduct of any election; or

(ii) Any responsibility for the compilation or revision of any electoral register; or

(h) Is disqualified for membership of the Assembly by any law in force in Seychelles by virtue of being concerned in any offence relating to elections.

(2) For the purpose of paragraph *(c)* of subsection (1) of this section:

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

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

(3) In this section, "nomination day" means, in relation to any election, the day upon which nomination papers in respect of the electoral area in which the election is held are required, by or under regulations made under section 28 *(c)* of this Order, to be delivered to the returning officer.

SCHEDULE 4

Qualifications and disqualifications for registration as a voter

1. Every person who:

(a) Is a British subject;

(b) Is twenty-one years of age or over;

(c) Has the requisite residence qualification; and

(d) Is not disqualified under this Schedule,

shall be entitled to be registered as a voter in respect of an electoral area:

Provided that a person who is twenty years of age and satisfies the other requirements of this paragraph shall be entitled to have his name entered on the register of voters in respect of an electoral area but shall not be deemed to be registered as a voter for the purposes of an election unless he has attained the age of twenty-one years.

2. (1) In order to have the requisite residence qualification to be registered as a voter in respect of an electoral area a person:

(a) Must have resided in Seychelles for any continuous period of twelve months; and

(b) Must be resident in the electoral area on the qualifying date.

(2) For the purposes of this paragraph a person who on the qualifying date is resident in the Outlying Islands (as defined as in Schedule 5 to this Order) shall, if immediately before being so resident he was resident in an electoral area, be deemed to be resident in that electoral area on the qualifying date.

(3) *(a)* For the purposes of this paragraph any question as to a person's residence on the qualifying date shall, subject to the provisions of sub-paragraph (2) and to the following provisions, be determined by reference to all the facts of the case.

(b) The place of residence of a person is, generally, that place which is the place of his habitation or home, whereto, when away therefrom, he intends to return. In particular when a person usually sleeps in one place and has his meals or is employed in another place, the place of his residence is where he sleeps.

(c) Generally, a person's place of residence is where his family is; if he is living apart from his family, with the intent to remain so apart from it in another place, the place of residence of such person is such other place.

(d) Any person who has more than one place of residence may elect in respect of which place he desires to be registered.

(e) A person's residence shall not be deemed to have been interrupted:

(i) By reason of that person's absence in the performance of any duty arising from or incidental to any office, service or employment held or undertaken by him, if he intends to resume actual residence within six months of giving it up and will not be prevented by the performance of the duty aforesaid; or

(ii) By reason of that person's absence for some temporary purpose, or for the purpose of undergoing a course of education or training or of receiving surgical or medical treatment.

(f) A person who is detained in legal custody at any place shall not by reason thereof be treated as resident there.

(g) Residence in Seychelles as a prohibited immigrant under the Immigration Ordinance 1960 (or any law amending or replacing that Ordinance) shall not be reckoned as residence for the purposes of this paragraph.

3. (1) No person shall be entitled to be registered as a voter in any electoral area who:

(a) Has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged; or

(b) Is under sentence of death imposed on him by a court of law having jurisdiction in Seychelles, or is serving a sentence of imprisonment (by whatever name called) of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such sentence of imprisonment the execution of which has been suspended; or

(c) Has been adjudged or otherwise declared to be of unsound mind under any law in force in Seychelles or is detained as a criminal lunatic; or

(d) Is disqualified from registering as a voter at any election under the provisions of any law for the time being in force.

(2) For the purpose of sub-paragraph (1) *(b)* of this paragraph 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.

4. No person shall be entitled to be registered as a voter in more than one electoral area.

5. For the purpose of this Schedule "the qualifying date" means such date as may from time to time be prescribed by the Governor by order published in the *Gazette:*

Provided that until other provision is made under this paragraph "the qualifying date" shall be 1st April 1970.

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

DECLARATION ON THE OCCASION OF THE TWENTY-FIFTH ANNIVERSARY OF THE UNITED NATIONS

Adopted by General Assembly resolution 2627 (XXV) of 24 October 1970

We, the representatives of the States Members of the United Nations, assembled at United Nations Headquarters on 24 October 1970 on the occasion of the twenty-fifth anniversary of the coming into force of the Charter of the United Nations, now solemnly declare that:

1. In furtherance of the anniversary objectives of peace, justice and progress, we reaffirm our dedication to the Charter of the United Nations and our will to carry out the obligations contained in the Charter.

2. The United Nations, despite its limitations, has, in its role as a centre for harmonizing the actions of nations in attaining the purposes mentioned in Article 1 of the Charter, made an important contribution to the maintenance of international peace and security, to developing friendly relations based on respect for the principle of equal rights and self-determination of peoples and to achieving international co-operation in economic, social, cultural and humanitarian fields. We reaffirm our deep conviction that the United Nations can provide a most effective means to strengthen the freedom and independence of nations.

3. In pursuance of the purposes of the Charter, we reaffirm our determination to respect the principles of international law concerning friendly relations and co-operation among States. We will exert our utmost efforts to develop such relations among all States, irrespective of their political, economic and social systems, on the basis of strict observance of the principles of the Charter, and in particular the principle of sovereign equality of States, the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, the principle that they shall settle their international disputes by peaceful means, the duty not to intervene in matters within the domestic jurisdiction of any State, the duty of States to co-operate with one another in accordance with the Charter, and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter. The progressive development and codification of international law, in which important progress was made during the first twenty-five years of the United Nations, should be advanced in order to promote the rule of law among nations. In this connexion we particularly welcome the adoption today of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

4. Despite the achievements of the United Nations, a grave situation of insecurity still confronts the Organization and armed conflicts occur in various parts of the world, while at the same time the arms race and arms expenditure continue and a large part of humanity is suffering from economic under-development. We reaffirm our determination to take concrete steps to fulfil the central task of the United Nations — the preservation of international peace and security — since the solution to many other crucial problems, notably those of disarmament and economic development, is inseparably linked thereto, and to reach agreement on more effective procedures for carrying out United Nations peace-keeping consistent with the Charter. We invite all Member States to resort more often to the peaceful settlement of international disputes and conflicts by the means provided for in the Charter, notably through negotiation, inquiry, mediation, conciliation, arbitration and judicial settlement, making use as appropriate of the relevant organs of the United Nations, as well as through resort to regional agencies or arrangements or other peaceful means of their own choice.

5. On the threshold of the Disarmament Decade, we welcome the important international agreements which have already been achieved in the limitation of armaments, especially nuclear arms. Conscious of the long and difficult search for ways to halt and reverse the arms race and of the grave threat to international peace posed by the continuing development of sophisticated weapons, we look forward to the early conclusion of further agreements of this kind and to moving forward from arms limitation to a reduction of armaments and to disarmament everywhere, particularly in the nuclear field, with the participation of all nuclear Powers. We call upon all Governments to renew their determination to make concrete progress towards the elimination of the arms race and the achievement of the final goal

– general and complete disarmament under effective international control.

6. We acclaim the role of the United Nations in the past twenty-five years in the process of the liberation of peoples of colonial, Trust and other Non-Self-Governing Territories. As a result of this welcome development, the number of sovereign States in the Organization has been greatly increased and colonial empires have virtually disappeared. Despite these achievements, many Territories and peoples continue to be denied their right to self-determination and independence, particularly in Namibia, Southern Rhodesia, Angola, Mozambique and Guinea (Bissau), in deliberate and deplorable defiance of the United Nations and world opinion by certain recalcitrant States and by the illegal régime of Southern Rhodesia. We reaffirm the inalienable right of all colonial peoples to self-determination, freedom and independence and condemn all actions which deprive any people of these rights. In recognizing the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal, we call upon all Governments to comply in this respect with the provisions of the Charter, taking into account the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the United Nations in 1960. We re-emphasize that these countries and peoples are entitled, in their just struggle, to seek and to receive all necessary moral and material help in accordance with the purposes and principles of the Charter.

7. We strongly condemn the evil policy of *apartheid*, which is a crime against the conscience and dignity of mankind and, like nazism, is contrary to the principles of the Charter. We reaffirm our determination to spare no effort, including support to those who struggle against it, in accordance with the letter and spirit of the Charter, to secure the elimination of *apartheid* in South Africa. We also condemn all forms of oppression and tyranny wherever they occur and racism and the practice of racial discrimination in all its manifestations.

8. The United Nations has endeavoured in its first twenty-five years to further the Charter objectives of promoting respect for, and observance of, human rights and fundamental freedoms for all. The international conventions and declarations concluded under its auspices give expression to the moral conscience of mankind and represent humanitarian standards for all members of the international community. The Universal Declaration of Human Rights, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide constitute a landmark in international co-operation and in the recognition and protection of the rights of every individual without any distinction. Although some progress has been achieved, serious violations of human rights are still being committed against individuals and groups in several regions of the world. We pledge ourselves to a continued and determined struggle against all violations of the rights and fundamental freedoms of human beings, by eliminating the basic causes of such violations, by promoting universal respect for the dignity of all people without regard to race, colour, sex, language or religion, and in particular through greater use of the facilities provided by the United Nations in accordance with the Charter.

9. During the past twenty-five years, efforts have been made, by adopting specific measures and by fashioning and employing new institutions, to give concrete substance to the fundamental objectives enshrined in the Charter, to create conditions of stability and well-being and to ensure a minimum standard of living consistent with human dignity. We are convinced that such economic and social development is essential to peace, international security and justice. The nations of the world have, therefore, resolved to seek a better and more effective system of international co-operation whereby the prevailing disparities may be banished and prosperity secured for all. International efforts for economic and technical co-operation must be on a scale commensurate with that of the problem itself. In this context, the activities of the United Nations system designed to secure the economic and social progress of all countries, in particular the developing countries, which have grown significantly in the past twenty-five years, should be further strengthened and increased. Partial, sporadic and half-hearted measures will not suffice. On the occasion of this anniversary, we have proclaimed the 1970s to be the Second United Nations Development Decade, which coincides with and is linked to the Disarmament Decade, and have adopted the International Development Strategy for the Second United Nations Development Decade.[1] We urge all Governments to give their full support to its most complete and effective implementation in order to realize the fundamental objectives of the Charter.

10. The new frontiers of science and technology demand greater international co-operation. We reaffirm our intention to make full use, *inter alia*, through the United Nations, of the unprecedented opportunities created by advances in science and technology for the benefit of peoples everywhere in such fields as outer space, the peaceful uses of the sea-bed beyond national jurisdiction and the improvement of the quality of the environment, so that the developed and developing countries can share equitably scientific and technical advances, thus contributing to the acceleration of economic development throughout the world.

11. The great increase in the membership of the Organization since 1945 testifies to its vitality; however, universality in terms of membership in the Organization has not yet been achieved. We

[1] Resolution 2626 (XXV).

express the hope that in the near future all other peace-loving States which accept and, in the judgement of the Organization, are able and willing to carry out the obligations of the Charter will become Members. It is furthermore desirable to find ways and means to strengthen the Organization's effectiveness in dealing with the growing volume and complexity of its work in all areas of its activities, and notably those relating to the strengthening of international peace and security, including a more rational division and co-ordination of work among the various agencies and organizations of the United Nations system.

12. Mankind is confronted today by a critical and urgent choice: either increased peaceful co-operation and progress or disunity and conflict, even annihilation. We, the representatives of the States Members of the United Nations, solemnly observing the twenty-fifth anniversary of the United Nations, reaffirm our determination to do our utmost to ensure a lasting peace on earth and to observe the purposes and principles embodied in the Charter, and express full confidence that the actions of the United Nations will be conducive to the advancement of mankind along the road to peace, justice and progress.

DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

Adopted by General Assembly resolution 2625 (XXV) of 24 October 1970

PREAMBLE

The General Assembly,

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

Noting that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

Recalling the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation

constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

Considering that the progressive development and codification of the following principles:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(d) The duty of States to co-operate with one another in accordance with the Charter,

(e) The principle of equal rights and self-determination of peoples,

(f) The principle of sovereign equality of States,

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles:

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

(a) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(b) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The duty of States to co-operate with one another in accordance with the Charter

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States

should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(a) States are juridically equal;

(b) Each State enjoys the rights inherent in full sovereignty;

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

GENERAL PART

2. *Declares* that:

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. *Declares further* that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

PROGRAMME OF CONCERTED INTERNATIONAL ACTION FOR THE ADVANCEMENT OF WOMEN

Adopted by General Assembly resolution 2716 (XXV) of 15 December 1970

I. GENERAL OBJECTIVES

1. The ratification of, or accession to, the relevant international conventions relating to the status of women.

2. The enactment of legislation to bring national laws into conformity with international instruments relating to the status of women, including in particular the Declaration on the Elimination of Discrimination against Women.

3. The taking of effective legal and other measures to ensure the full implementation of these instruments.

4. The development of effective large-scale educational and informational programmes using all mass media and other available means to make all sectors of the population in rural as well as urban areas fully aware of the norms established by the United Nations and the specialized agencies in the conventions, recommendations, declarations and resolutions adopted under their auspices, and to educate public opinion and enlist its support for all measures aimed at achieving the realization of the standards set forth.

5. The assessment and evaluation of the contribution of women to the various economic and social sectors in relation to the country's over-all development plans and programmes, with a view to establishing specific objectives and minimum targets which might realistically be achieved by 1980 to increase the effective contribution of women to the various sectors.

6. The study of the positive and negative effects of scientific and technological change on the status of women, with a view to ensuring continuous progress, especially as regards the education and training as well as the living conditions and employment of women.

7. The elaboration of short-term and long-term programmes to achieve these specific objectives and minimum targets, where possible within the framework of over-all national development plans or programmes, and the provision of adequate funds for programmes which advance the status of women.

8. The establishment of machinery and procedures to make possible the continuous review and evaluation of women's integration into all sectors of economic and social life and their contribution to development.

9. The full utilization of the desire and readiness of women to devote their energies, talents and abilities to the benefit of society.

II. MINIMUM TARGETS TO BE ACHIEVED DURING THE SECOND UNITED NATIONS DEVELOPMENT DECADE

A. *Education*

1. The progressive elimination of illiteracy, ensuring equality in literacy between the sexes, especially among the younger generation.

2. Equal access of boys and girls to education at the primary and secondary levels and at educational institutions of all types, including universities and vocational, technical and professional schools.

3. Decisive progress in achieving free and compulsory education at the primary level and in achieving free education at all levels.

4. The establishment of the same choice of curricula for boys and girls, the same examinations, equally qualified teaching staff, and the same quality of school premises and equipment, whether the institutions are co-educational or not, and equal opportunities to receive scholarships and grants.

5. The achievement of equality in the percentage of boys and girls receiving primary education and of a substantial increase in the number of girls at all educational levels, in particular in the field of technical and professional education.

6. The establishment of educational policies that take account of employment needs and opportunities and of scientific and technological change.

B. *Training and employment*

1. Provision of the same vocational advice and guidance to members of both sexes.

2. Equal access of girls and women to vocational training and retraining at all levels, with a view to achieving their full participation in the economic and social life of their countries.

3. Universal acceptance of the principle of equal pay for equal work and the adoption of effective measures to implement it.

4. Full acceptance of the policy of non-discrimination in relation to the employment and treatment of women, and measures to give effect to that policy on a progressive basis.

5. A substantial increase in the numbers of qualified women employed in skilled and technical work, and at all higher levels of economic life and in posts of responsibility.

6. A substantial increase in the opportunities for involvement of women in all facets of agricultural development and agricultural services.

C. *Health and maternity protection*

1. The progressive extension of measures to ensure maternity protection, with a view to ensuring paid maternity leave with the guarantee of returning to former or equivalent employment.

2. The development and extension of adequate child care and other facilities to assist parents with family responsibilities.

3. The adoption of measures for the creation and development of a wide network of special medical establishments for the protection of the health of the mother and child.

4. Making available to all persons who so desire the necessary information and advice to enable them to decide freely and responsibly on the number and spacing of their children and to prepare them for responsible parenthood, including information on the ways in which women can benefit from family planning. Such information and advice should be based on valid and proven scientific expertise, with due regard to the risks that may be involved.

D. *Administration and public life*

1. A substantial increase in the number of women participating in public and government life at the local, national and international levels. Special attention might be paid to training women for such participation, especially in middle-level and higher posts.

2. A substantial increase in the number of qualified women holding responsible posts at the executive and policy-making levels, including those related to over-all development planning.

INTERNATIONAL LABOUR ORGANISATION*

CONVENTION CONCERNING MINIMUM WAGE FIXING, WITH SPECIAL REFERENCE TO DEVELOPING COUNTRIES

Convention 131, adopted by the International Labour Conference at its Fifty-fourth Session at Geneva on 22 June 1970*

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-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and

Considering that these Conventions have played a valuable part in protecting disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, 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-second day of June of the year one thousand nine hundred and seventy the following Convention, which may be cited as the Minimum Wage Fixing Convention, 1970:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the position of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

* The text of Conventions Nos. 131 and 132 and that of Recommendation No. 136, reproduced below, was furnished by the International Labour Office. In addition to these instruments, the International Labour Conference also adopted in 1970 the following conventions: the Accommodation of Crews (Supplementary Provisions) Convention 1970 (No. 133); and the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134); and the following recommendations: the Minimum Wage Fixing Recommendation, 1970 (No. 135); the Vocational Training (Seafarers) Recommendation, 1970 (No. 137); the Seafarers' Welfare Recommendation, 1970 (No. 138); the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139); the Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140); the Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141); and the Prevention of Accidents (Seafarers) Recommendation, 1970 (No. 142).

(a) The needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) Economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connexion with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of:

(a) Representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;

(b) Persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

Article 6

This Convention shall not be regarded as revising any existing Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

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 9

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 10

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 11

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 12

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 13

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 9 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 14

The English and French versions of the text of this Convention are equally authoritative.

CONVENTION CONCERNING ANNUAL HOLIDAYS WITH PAY (REVISED), 1970

Convention 132, adopted by the International Labour Conference at its Fifty-fourth Session at Geneva on 24 June 1970

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-fourth Session on 3 June 1970, and

Having decided upon the adoption of certain proposals with regard to holidays with pay, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy the following Convention, which may be cited as the Holidays with Pay Convention (Revised), 1970:

Article 1

The provisions of this Convention, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards, court decisions, statutory wage fixing machinery, or in such other manner consistent with national practice as may be appropriate under national conditions, shall be given effect by national laws or regulations.

Article 2

1. This Convention applies to all employed persons, with the exception of seafarers.

2. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention limited categories of employed persons in respect of whose employment special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters, arise.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 2 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

1. Every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length.

2. Each Member which ratifies this Convention shall specify the length of the holiday in a declaration appended to its ratification.

3. The holiday shall in no case be less than three working weeks for one year of service.

4. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a further declaration, that it specifies a holiday longer than that specified at the time of ratification.

Article 4

1. A person whose length of service in any year is less than that required for the full entitlement prescribed in the preceding Article shall be entitled in respect of that year to a holiday with pay proportionate to his length of service during that year.

2. The expression "year" in paragraph 1 of this Article shall mean the calendar year or any other period of the same length determined by the competent authority or through the appropriate machinery in the country concerned.

Article 5

1. A minimum period of service may be required for entitlement to any annual holiday with pay.

2. The length of any such qualifying period shall be determined by the competent authority or through the appropriate machinery in the country concerned but shall not exceed six months.

3. The manner in which length of service is calculated for the purpose of holiday entitlement shall be determined by the competent authority or through the appropriate machinery in each country.

4. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, absence from work for such reasons beyond the control of the employed person concerned as illness, injury or maternity shall be counted as part of the period of service.

Article 6

1. Public and customary holidays, whether or not they fall during the annual holiday, shall not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

2. Under conditions to be determined by the competent authority or through the appropriate machinery in each country, periods of incapacity for work resulting from sickness or injury may not be counted as part of the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention.

Article 7

1. Every person taking the holiday envisaged in this Convention shall receive in respect of the full period of that holiday at least his normal or average remuneration (including the cash equivalent of any part of that remuneration which is paid in kind and which is not a permanent benefit continuing whether or not the person concerned is on holiday), calculated in a manner to be determined by the competent authority or through the appropriate machinery in each country.

2. The amounts due in pursuance of paragraph 1 of this Article shall be paid to the person concerned in advance of the holiday, unless otherwise provided in an agreement applicable to him and the employer.

Article 8

1. The division of the annual holiday with pay into parts may be authorized by the competent authority or through the appropriate machinery in each country.

2. Unless otherwise provided in an agreement applicable to the employer and the employed person concerned, and on condition that the length of service of the person concerned entitles him to such a period, one of the parts shall consist of at least two uninterrupted working weeks.

Article 9

1. The uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen.

2. Any part of the annual holiday which exceeds a stated minimum may be postponed, with the consent of the employed person concerned, beyond the period specified in paragraph 1 of this Article and up to a further specified time limit.

3. The minimum and the time limit referred to in paragraph 2 of this Article shall be determined by the competent authority after consultation with the organisations of employers and workers concerned, or through collective bargaining, or in such other manner consistent with national practice as may be appropriate under national conditions.

Article 10

1. The time at which the holiday is to be taken shall, unless it is fixed by regulation, collective agreement, arbitration award or other means consistent with national practice, be determined by the employer after consultation with the employed person concerned or his representatives.

2. In fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation available to the employed person shall be taken into account.

Article 11

An employed person who has completed a minimum period of service corresponding to that which may be required under Article 5, para-

graph 1, of this Convention shall receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

Article 12

Agreements to relinquish the right to the minimum annual holiday with pay prescribed in Article 3, paragraph 3, of this Convention or to forgo such a holiday, for compensation or otherwise, shall, as appropriate to national conditions, be null and void or be prohibited.

Article 13

Special rules may be laid down by the competent authority or through the appropriate machinery in each country in respect of cases in which the employed person engages, during the holiday, in a gainful activity conflicting with the purpose of the holiday.

Article 14

Effective measures appropriate to the manner in which effect is given to the provisions of this Convention shall be taken to ensure the proper application and enforcement of regulations or provisions concerning holidays with pay, by means of adequate inspection or otherwise.

Article 15

1. Each Member may accept the obligations of this Convention separately:

(a) In respect of employed persons in economic sectors other than agriculture;

(b) In respect of employed persons in agriculture.

2. Each Member shall specify in its ratification whether it accepts the obligations of the Convention in respect of the persons covered by subparagraph *(a)* of paragraph 1 of this Article, in respect of the persons covered by subparagraph *(b)* of paragraph 1 of this Article, or in respect of both.

3. Each Member which has on ratification accepted the obligations of this Convention only in respect either of the persons covered by subparagraph *(a)* of paragraph 1 of this Article or of the persons covered by subparagraph *(b)* of paragraph 1 of this Article may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of all persons to whom this Convention applies.

Article 16

This Convention revises the Holidays with Pay Convention, 1936, and the Holidays with Pay (Agriculture) Convention, 1952, on the following terms:

(a) Acceptance of the obligations of this Convention in respect of employed persons in economic sectors other than agriculture by a Member which is a party to the Holidays with Pay Convention, 1936, shall *ipso jure* involve the immediate denunciation of that Convention;

(b) Acceptance of the obligations of this Convention in respect of employed persons in agriculture by a Member which is a party to the Holidays with Pay (Agriculture) Convention, 1952, shall *ipso jure* involve the immediate denunciation of that Convention;

(c) The coming into force of this Convention shall not close the Holidays with Pay (Agriculture) Convention, 1952, to further ratification.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

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 19

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 20

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 21

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 22

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 23

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 19 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 24

The English and French versions of the text of this Convention are equally authoritative.

RECOMMENDATION CONCERNING SPECIAL YOUTH EMPLOYMENT AND TRAINING SCHEMES FOR DEVELOPMENT PURPOSES

Recommendation 136, adopted by the International Labour Conference at its Fifty-fourth Session at Geneva on 23 June 1970

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-fourth Session on 3 June 1970, and

Recalling the provisions of existing international labour Conventions and Recommendations on the training and employment of young persons, in particular the Unemployment (Young Persons) Recommendation, 1935, the Vocational Training Recommendation, 1962, and the Employment Policy Convention and Recommendation, 1964, and

Considering that special youth employment schemes and training schemes designed to give young persons the necessary skills to enable them to adapt to the pace of a changing society and to take an active part in the development of their country constitute an approach to youth employment problems, supplementary to those of existing instruments, and

Noting that the problems which this approach is intended to meet have only come into prominence on a wide scale in recent years, and

Considering that it is important to adopt an instrument setting out the objectives, methods and safeguards of such special schemes, in such manner that they would be fully consistent with earlier international labour standards relevant to conditions of service therein, particularly those of the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957, and

Having decided upon the adoption of certain proposals with regard to special youth employment and training schemes for development purposes, which is the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-third day of June of the year one thousand nine hundred and seventy the following Recommendation, which may be cited as the Special Youth Schemes Recommendation, 1970.

I. NATURE OF SPECIAL SCHEMES

1. (1) This Recommendation applies to special schemes designed to enable young persons to take

part in activities directed to the economic and social development of their country and to acquire education, skills and experience facilitating their subsequent economic activity on a lasting basis and promoting their participation in society.

(2) These schemes are hereinafter referred to as "special schemes".

2. The following may be regarded as special schemes for the purpose of this Recommendation:

(a) Schemes which meet needs for youth employment and training not yet met by existing national educational or vocational training programmes or by normal opportunities on the employment market;

(b) Schemes which enable young persons, especially unemployed young persons, who have educational or technical qualifications which are needed by the community for development, particularly in the economic, social, educational or health fields, to use their qualifications in the service of the community.

II. GENERAL PRINCIPLES

3. (1) Special schemes should be organized within the framework of national development plans where these exist and should, in particular, be fully integrated with human resources plans and programmes directed towards the achievement of full and productive employment as well as with regular programmes for the education and training of young people.

(2) Special schemes should have an interim character to meet current and pressing economic and social needs. They should not duplicate or prejudice other measures of economic policy or the development of regular educational or vocational training programmes nor be regarded as an alternative to these measures and these regular programmes.

(3) Special schemes should not be operated in a manner likely to lower labour standards nor should the services of participants therein be used for the advantage of private persons or undertakings.

(4) Special schemes should provide participants, where appropriate, with at least a minimum level of education.

4. The essential elements of every special scheme should include the safeguarding of human dignity and the development of the personality and of a sense of individual and social responsibility.

5. Special schemes should be administered without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin; they should be used for the active promotion of equality of opportunity and treatment.

6. The purposes and objectives of each special scheme and the categories of participants should be clearly defined by the competent authority and should be subject to periodic review in the light of experience.

7. (1) Participation in special schemes should be voluntary; exceptions may be permitted only by legislative action and where there is full compliance with the terms of existing international labour Conventions on forced labour and employment policy.

(2) Schemes in respect of which exceptions may be so permitted may include:

(a) Schemes of education and training involving obligatory enrolment of unemployed young people within a definite period after the age limit of regular school attendance;

(b) Schemes for young people who have previously accepted an obligation to serve for a definite period as a condition of being enabled to acquire education or technical qualifications of special value to the community for development.

(3) Where exceptions are so permitted, participants should, to the greatest possible extent, be given a free choice among different available forms of activity and different regions within the country and due account should be taken in their assignment of their qualifications and aptitudes.

8. The conditions of service of participants in special schemes should be clearly defined by the competent authority; they should be in conformity with the legal provisions governing minimum age for admission to employment and in harmony with other legal provisions applicable to young persons in regular training or in normal employment.

9. Participants should continue to have the opportunity of membership in youth or trade union organisations of their choice and of taking part in their activities.

10. There should be formal procedures for appeal by participants against decisions concerning their recruitment, their admission or their conditions of service, as well as informal grievance procedures to deal with minor complaints.

III. SCHEMES WHICH MEET NEEDS FOR YOUTH EMPLOYMENT AND TRAINING NOT YET MET BY EXISTING NATIONAL EDUCATIONAL OR VOCATIONAL TRAINING PROGRAMMES OR BY NORMAL OPPORTUNITIES ON THE EMPLOYMENT MARKET

A. *Purposes*

11. As appropriate to national needs and circumstances, special schemes to which this Part of this Recommendation applies should serve one or more of the following specific purposes:

(a) To give young persons who are educationally or otherwise disadvantaged such education, skills and work habits as are necessary for useful and remunerative economic activity and for integration into society;

(b) To involve young persons in national economic and social development, including agricultural and rural development;

(c) To provide useful occupation related to economic and social development for young persons who would otherwise be unemployed.

B. *Participation*

12. In selecting young persons to participate in special schemes, the following should be taken into account:

(a) Age and education, training and work experience if any, in relation, according to the nature of the scheme, to the aim of extending the opportunities of disadvantaged young persons, to ability to benefit from the scheme and to ability to contribute to the scheme;

(b) Mental and physical aptitude for the tasks to be performed, both as a participant and subsequently;

(c) The extent to which the experience to be acquired in the scheme is likely to enhance the further opportunities of the young persons concerned and their potential usefulness in economic and social development.

13. Age-limits for participation which are appropriate to the training offered and the work to be performed in different kinds of special schemes should be specified by the competent authority and should take account of international labour standards regarding minimum age for admission to employment.

14. Special schemes should allow as large a number of young persons as possible to transfer to normal economic activity or to regular educational or vocational training programmes and the period of participation should accordingly be limited.

15. In all special schemes, appropriate action should be taken to ensure that before admission each participant fully understands all the conditions of service, including rules of conduct that may exist, the work content of the scheme, the required training and entitlements during the period and at the time of termination of service.

C. *Content of Special Schemes*

16. The content of special schemes should be adapted to and may vary, even within one scheme, according to the age, sex, educational and training level and capacities of the participants.

17. All special schemes should include a brief initial period for:

(a) Instruction in matters of importance to all participants, such as, in particular, general safety and health rules and the detailed regulations governing activities under the scheme;

(b) Accustoming participants to the conditions of life and work under the scheme and stimulating their interest;

(c) Ascertaining the participants' aptitudes with a view to placing them in the type of activity best corresponding to these aptitudes.

18. Participants in special schemes should be provided with a complement of education, including civic, economic and social education, related to their needs and to the needs and aspirations of the country and should be informed of the role and functions of organisations established on a voluntary basis to represent the interests of workers and employers.

19. Special schemes designed, in whole or in part, to provide young persons who have limited opportunities with the skills necessary for useful economic activity should:

(a) Concentrate on preparing participants for occupations in which they are likely to find opportunities for useful work, while giving fullest possible consideration to their occupational preferences;

(b) Provide participants with a sound basis of practical skills and related theoretical knowledge;

(c) Take account of the potential role of participants as a stimulating influence on others, and give them the qualifications necessary for such a role;

(d) Facilitate and, as far as possible, ensure:

(i) Transition to regular educational or vocational training programmes or to other special schemes for further education or training, particularly of those showing special abilities;

(ii) Transition to normal economic activity, in particular by measures designed to ensure the acceptability, in such economic activity, of the qualifications acquired by participants.

20. Special schemes designed, in whole or in part, to involve young persons in economic or social development projects should:

(a) Include training, at least to the extent of providing full training as required for the work to be undertaken, and training in relevant health and safety measures;

(b) Aim at developing good work practices;

(c) Employ participants, where possible, in fields for which they show aptitude and have some qualification.

21. Criteria for selecting work projects for the special schemes referred to in the preceding Paragraph should include the following:

(a) Potential contribution to expansion of economic activity in the country or region and, in particular, to expansion of subsequent opportunities for the participants;

(b) Training value, with particular reference to occupations in which participants are subsequently likely to find opportunities for useful work;

(c) Value as an investment in economic and social development and economic viability, including costs in relation to results;

(d) Need for special means of action, implying in particular that the work of participants will not be in unfair competition with that of workers in normal employment.

D. *Conditions of Service*

22. The conditions of service should comply at least with the following standards:

(a) The duration of service should not normally exceed two years;

(b) Certain grounds, such as medical reasons, or family or personal difficulties, should be recognised as justifying the release of participants before the expiry of the normal period of service;

(c) The hours spent in a day and in a week on work and training should be so limited as to allow sufficient time for education and for rest as well as leisure activities;

(d) In addition to such adequate accommodation, food and clothing as may be appropriate to the nature of the special scheme, participants should receive a payment in cash and be offered the opportunity and incentive to accumulate some savings;

(e) In special schemes with a duration of service of one year or more, participants should be granted an annual holiday, where possible with free travel to and from their homes;

(f) As far as possible, participants should be covered by social security provisions applicable to persons working under normal contracts; in any event there should be arrangements for free medical care of participants and for compensation in respect of incapacity or death resulting from injury or illness contracted in the special scheme.

E. *Selection and Training of Staff*

23. All special schemes should include arrangements which ensure adequate supervision of participants by trained staff having access to technical and pedagogical guidance.

24. (1) In the selection of staff, emphasis should be placed not only on satisfactory qualifications for and experience in the work to be performed, but also on understanding of young persons, on qualities of leadership and on adaptability. At least some members of the staff should have experience of normal employment outside special schemes.

(2) All possible sources of recruitment of staff should be explored, including the possibility of encouraging participants in special schemes who have shown qualities of leadership to prepare themselves for staff positions.

25. Training of supervisory and other technical staff should include, in addition to such instruction in vocational specialities as may be necessary, at least the following:

(a) Training in instruction techniques, with particular emphasis on those used in training young persons;

(b) Basic instruction in human relations, with special reference to motivation and work attitudes;

(c) Training in work organisation, including the assignment of duties according to the abilities and training level of participants.

26. Training of administrative staff should include, in addition to such instruction in vocational specialities as may be necessary, at least the following:

(a) Instruction designed to give the persons concerned an understanding of the objectives of the special scheme and knowledge of applicable labour and youth protection legislation, and of specific rules and regulations governing the scheme;

(b) Instruction to provide a sufficient knowledge of the technical aspects of the work of the scheme;

(c) Such instruction in human relations as will facilitate good relations with supervisory and other technical staff and with participants.

F. *Assistance to participants for their occupational future*

27. During service in a special scheme, participants should be given information and guidance to assist them in making decisions regarding their occupational future.

28. Participants showing special aptitudes should be helped in all appropriate ways to continue their education and training outside the special scheme on completion of service.

29. Special and immediate efforts should be made to integrate participants rapidly in normal economic activity on completion of their term of service; these should be in addition to the regular efforts by the employment services and all other appropriate bodies.

30. The release of participants from special schemes should as far as possible be related, in time and in number, to the capacity of the economy to absorb new entrants into gainful activity: Provided that in exceptional schemes with a compulsory element the individual's right to leave the scheme after the period of service originally specified should be ensured.

31. Assistance, wherever possible through existing institutions, to former participants who establish themselves on their own account, or as members of a group, might include:

(a) Promotion of access to credit, marketing and saving facilities;

(b) Continuing contact to provide encouragement and necessary technical managerial advice;

(c) In the case of co-operatives, financial and administrative aid as provided for in the Co-operatives (Developing Countries) Recommendation, 1966.

32. To the extent that resources permit, participants should receive on satisfactory completion of service a payment in cash or a payment in kind, such as a tool-kit, designed to assist their establishment in normal economic activity.

IV. SCHEMES WHICH ENABLE YOUNG PERSONS WHO HAVE EDUCATIONAL OR TECHNICAL QUALIFICATIONS WHICH ARE NEEDED BY THE COMMUNITY FOR DEVELOPMENT TO USE THEIR QUALIFICATIONS IN THE SERVICE OF THE COMMUNITY

33. Special schemes to which this Part of this Recommendation applies should stimulate the interest of young persons in the economic and social development of their country and develop a sense of responsibility to the community.

34. Participants should be employed in fields for which they are specially qualified or in closely related fields.

35. As necessary, the qualifications of participants should be supplemented with training in skills and methods needed for the tasks to be performed.

36. Arrangements should be made under which qualified guidance and advice on problems encountered in their assignment are readily available to participants.

37. The conditions of service should comply at least with the following standards:

(a) The duration of service should not normally exceed two years;

(b) Certain grounds, such as medical reasons, or family or personal difficulties, should be recognized as justifying the release of participants before the expiry of the normal period of service;

(c) Work and training schedules should take account of the need of participants for rest and leisure;

(d) In addition to such adequate board and lodging as may be appropriate to the nature of the special scheme, participants should receive an appropriate remuneration;

(e) In special schemes with a duration of service of one year or more, participants should be granted an annual holiday, where possible with free travel to and from their homes;

(f) Participants should be covered by any appropriate social security provisions applicable to persons working under normal contracts; in any event there should be arrangements for free medical care of participants and for compensation in respect of incapacity or death resulting from injury or illness contracted in the special scheme.

38. Measures should be taken to facilitate the absorption of participants, after termination of service, into normal employment in their profession or occupation.

V. ADMINISTRATIVE ARRANGEMENTS

39. The direction and co-ordination of special schemes at the national level should be achieved by means of some appropriate body or bodies established by the competent authority.

40. The body or bodies should, wherever possible, include, in addition to government members, representatives of workers', employers' and youth organisations so as to ensure their active participation in the planning, operation, co-ordination, inspection and evaluation of the special schemes.

41. In the performance of these tasks the body or bodies should, as necessary, consult voluntary agencies and authorities responsible for such relevant fields as labour, education, economic affairs, agriculture, industry and social affairs.

42. The body or bodies should maintain continuous liaison with the authorities responsible for regular educational and training programmes, in order to ensure co-ordination with a view to the gradual elimination of special schemes as rapidly as possible.

43. The active participation of local authorities should be sought in relation to the choice and implementation of projects within the framework of special schemes.

44. When establishing special schemes, the competent authority should endeavour to provide sufficient financial and material resources and the necessary qualified staff to ensure their full implementation. In this connexion particular attention should be given to ways in which the schemes could generate their own sources of income. No financial contribution should be required from the participant or his family.

45. Provision should be made for the systematic inspection and auditing of special schemes.

46. Organisation at the local level should be such as to train and encourage the participants gradually to take a share in the administration of their scheme.

VI. INTERNATIONAL CO-OPERATION

47. As regards special schemes under which young persons from one country participate in activities directed to the development of another country, the competent authorities and bodies concerned should apply the relevant provisions of this Recommendation as fully as possible in respect of matters within their jurisdiction and should co-operate with each other with a view both to ensuring the application of such provisions to matters requiring joint action and to resolving any difficulties which may arise in connexion with such application.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

Adopted by the General Conference at its Sixteenth Session, Paris, 14 November 1970*

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session,

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that the illicit import, export and tranfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of Unesco's mission to promote by recommending to interested States, international conventions to this end,

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19,

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

Adopts this Convention on the fourteenth day of November 1970.

Article 1

For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(b) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(c) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(d) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(e) Antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) Objects of ethnological interest;

(g) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

* Text furnished by UNESCO.

(ii) Original works of statuary art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(h) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(i) Postage, revenue and similar stamps, singly or in collections;

(j) Archives, including sound, photographic and cinematographic archives;

(k) Articles of furniture more than one hundred years old and old musical instruments.

Article 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Article 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

(a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;

(b) Cultural property found within the national territory;

(c) Cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;

(d) Cultural property which has been the subject of a freely agreed exchange;

(e) Cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

(a) Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;

(b) Establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;

(c) Promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops . . .) required to ensure the preservation and presentation of cultural property;

(d) Organizing the supervision of archaeological excavations, ensuring the preservation *in situ* of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) Establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) Taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(g) Seeing that appropriate publicity is given to the disappearance of any items of cultural property.

Article 6

The States Parties to this Convention undertake:

(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;

(b) To prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;

(c) To publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Article 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6 *(b)* and 7 *(b)* above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures, to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Article 10

The States Parties to this Convention undertake:

(a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;

(b) To endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

Article 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

(a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;

(b) To ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;

(c) To admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;

(d) To recognize the indefeasible right of each State Party to this Convention to classify and

declare certain cultural property as inalienable which should therefore *ipso facto* not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

Article 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

Article 15

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

Article 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

Article 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:

(a) Information and education;

(b) Consultation and expert advice;

(c) Co-ordination and good offices.

2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.

4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, UNESCO may extend its good offices to reach a settlement between them.

Article 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

Article 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 22

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories,

and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

Article 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

Article 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 26

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

COUNCIL OF EUROPE

EUROPEAN CONVENTION ON THE REPATRIATION OF MINORS

Done at The Hague on 28 May 1970*

The member States of the Council of Europe, signatory hereto,

Considering that their close unity is manifested particularly in increased movements of persons;

Considering that although this generally has beneficial consequences, certain problems are nevertheless involved, in particular when a minor is in the territory of a State against the will of those responsible for protecting his interests or when his presence in the territory of a State is incompatible either with his own interests or those of that State;

Convinced of the necessity for mutual co-operation to enable such minors to be compulsorily transferred from one State to another,

Have agreed as follows:

SECTION I

General information

Article 1

For the purposes of this Convention:

(a) The term "minor" shall mean any person not having attained his majority under the law applicable according to the rules of private international law of the requesting State and who under this same law has not the right himself to determine his own place of residence;

(b) The term "parental authority" shall mean the authority devolving upon natural or legal persons under the law or by a legal or administrative decision, to determine a minor's place of residence;

(c) The term "repatriation" shall mean the transfer, in implementation of this Convention, of a minor from one Contracting State to another Contracting State, whether or not the latter is the State of which he is a national.

Article 2

(1) This Convention shall apply to minors in the territory of a Contracting State whose repatriation is requested by another Contracting State for one of the following reasons:

(a) The presence of the minor in the territory of the requested State is against the will of the person or persons having parental authority in respect of him;

(b) The presence of the minor in the territory of the requested State is incompatible with a measure of protection or re-education taken in respect of him by the competent authorities of the requesting State;

(c) The presence of the minor is necessary in the territory of the requesting State because of the institution of proceedings there with a view to taking measures of protection and re-education in respect of him.

(2) This Convention shall also apply to the repatriation of minors whose presence in its territory a Contracting State deems to be incompatible with its own interests or with the interests of the minors concerned, provided that its legislation authorises removal of the minor from its territory.

Article 3

Each Contracting State shall designate a central authority to formulate, issue and receive requests for repatriation and notify the Secretary General of the Council of Europe of the authority so designated.

SECTION II

Repatriation of a minor on the request of a State other than the State of sojourn

Article 5

(1) No decision shall be taken concerning a request for repatriation until the minor, if his capacity for discernment allows, has been heard in person by a competent authority in the requested State.

(2) The said authority shall also endeavour to obtain the views of those persons having an interest in the decision, in particular, those having parental authority or those who, in the territory of

* Text published in the *European Treaty Series*, No. 71 and furnished by the Council of Europe.

the requested State, have *de facto* custody of the minor. This ascertainment of views shall not take place in so far as it is likely to prejudice the interests of the minor by reason of the delay which it may cause.

Article 6

The requested State shall grant any request for repatriation which is in conformity with the provisions of the present Convention and grounded on Article 2, paragraph 1, unless it exercises its right to refuse a request in accordance with Articles 7 and 8.

Article 7

A request may be refused:

(a) If the minor, according to the law applicable under the rules of private international law of the requested State, has the right himself to determine his place of residence, or if such a right follows from the national law of the requested State;

(b) If it is grounded on Article 2, paragraph 1 *(a)* and is designed to submit the minor to the authority of a person or persons who do not have parental authority according to the law applicable under the rules of private international law of the requested State or do not have parental authority under the national law of the requested State;

(c) If the requested State considers that the requesting State is not competent to take the measures referred to in Article 2, paragraph 1 *(b)* and *(c)*;

(d) If the requested State considers that the repatriation of the minor would be contrary to *ordre public*;

(e) If the minor is a national of the requested State;

(f) If the minor in question is a national of a State which is not a Party to the Convention, and whose repatriation would not be compatible with the obligations existing between that State and the requested State.

Article 8

The requested State may, moreover, having regard to all the aspects of the case, refuse the request:

(a) If, being present in the territory of the requested State, the person or persons having parental authority or those having care of the minor, oppose repatriation;

(b) If the repatriation is considered by the requested State to be contrary to the interests of the minor, in particular when he has effective family or social ties in that State or when repatriation is incompatible with a measure of protection or re-education taken in the said State.

Article 9

The decision of the requested State on the request may be postponed:

(a) If the parental authority upon which the request is based is contested on serious grounds;

(b) If it considers it necessary to prosecute the minor for an offence or to require him to submit to a penal sanction involving deprivation of liberty.

Article 10

If the request is granted the competent authorities in the requesting State and the requested State shall agree as promptly as possible on the repatriation procedure.

Article 11

The requested State may take such provisional measures as seem necessary for the purpose of repatriation, in particular placing the minor in a home for juveniles. It may at any time terminate these measures which shall, in any case, be terminated after the expiration of a period of 30 days if the request has not been granted. The measures in question are governed by the domestic law of the requested State.

Article 12

In urgent cases, the central authority in the requesting State may ask that the provisional measures mentioned in Article 11 be taken before the requested State has received the request for repatriation. Such measures shall cease if the request for repatriation has not been received within ten days.

Article 13

(1) No prosecution may be initiated or continued in the requesting State against a person repatriated in accordance with the provisions of this Section for offences committed prior to his repatriation, unless the requested State expressly consents to such prosecution. Such consent shall also be required in order to enforce a penal sanction involving deprivation of liberty or any more severe sentence passed in the requesting State before repatriation.

(2) The consent referred to in paragraph 1 shall be governed by the rules regulating extradition in the requested State or by such other rules established there for the implementation of this Article.

(3) Consent may not be withheld in cases where the requested State would be obliged to grant extradition, were extradition to be requested.

SECTION III

Repatriation on the request of the State of sojourn

Article 14

(1) In the cases provided for in Article 2, paragraph 2, the State of sojourn of the minor may request another Contracting State to agree to the repatriation of such a minor as hereinafter provided:

(a) When the person or persons having parental authority are in another Contracting State, the request shall be addressed to that other State;

(b) When the person or persons having parental authority are in a State which is not a party to this Convention, the request shall be addressed to the Contracting State where the minor has his habitual residence;

(c) When it is not known in what State the person or persons having parental authority are to be found or when no-one has parental authority, the request shall be addressed to the Contracting State where the minor has his habitual residence or, if repatriation to that State is not agreed to or otherwise proves impossible, to the Contracting State of which the minor is a national.

(2) The provisions of paragraph 1 shall not affect the powers which Contracting States enjoy under their own legislation in respect of foreign nationals.

SECTION IV

Common provisions

Article 19

(1) The transit of a minor in process of repatriation, in pursuance of the present Convention, through the territory of a Contracting State, shall be authorized upon simple notification, of which there shall be a written record by the State from which the repatriation is to be effected.

(2) Transit may be refused when:

(a) The minor is the subject of a criminal prosecution in the State of transit or if he is required to submit to a penal sanction involving deprivation of liberty or a more severe penalty;

(b) The minor is a national of the State of transit.

(3) If transit is not refused, the minor may neither be arrested nor detained in the State of transit for offences committed before his entry into that State.

(4) The State of transit shall seek to ensure that the minor does not elude repatriation.

Article 20

Reasons shall be given for any refusal of repatriation or transit.

...

SECTION V

Final clauses

Article 23

(1) This Convention shall be open to signature by the member States represented on the Committee of Ministers of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

(2) This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.

(3) In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of deposit of its instrument of ratification or acceptance.

Article 24

(1) After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.

(2) Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

...

Article 29

(1) This Convention shall remain in force indefinitely.

(2) Any Contracting State may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

(3) Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

...

DECLARATION ON MASS COMMUNICATION MEDIA AND HUMAN RIGHTS

Adopted by the Constituent Assembly of the Council of Europe
at its Twenty-first Ordinary Session by Resolution 428 (1970) of 23 January 1970

A. Status and independence of the press and the other mass media

1. The press and the other mass media, though generally not public institutions, perform an essential function for the general public. In order to enable them to discharge that function in the public interest, the following principles should be observed.

2. The right to freedom of expression shall apply to mass communication media.

3. This right shall include freedom to seek, receive, impart, publish and distribute information and ideas. There shall be a corresponding duty for the public authorities to make available information on matters of public interest within reasonable limits and a duty for mass communication media to give complete and general information on public affairs.

4. The independence of the press and other mass media from control by the state should be established by law. Any infringement of this independence should be justifiable by courts and not by executive authorities.

5. There shall be no direct or indirect censorship of the press, or of the contents of radio and television programmes, or of news or information conveyed by other media such as news reels shown in cinemas. Restrictions may be imposed within the limits authorized by Article 10 of the European Convention on Human Rights.[1] There shall be no control by the state of the contents of radio and television programmes, except on the grounds set out in paragraph 2 of that Article.

6. The internal organisation of mass media should guarantee the freedom of expression of the responsible editors. Their editorial independence should be preserved.

7. The independence of mass media should be protected against the dangers of monopolies. The effects of concentration in the press, and possible measures of economic assistance require further consideration.

8. Neither individual enterprises, nor financial groups should have the right to institute a monopoly in the fields of press, radio or television, nor should government-controlled monopoly be permitted. Individuals, social groups, regional or local authorities should have — as far as they comply with the established licensing provisions — the right to engage in these activities.

9. Special measures are necessary to ensure the freedom of foreign correspondents, including the staff of international press agencies, in order to permit the public to receive accurate information from abroad. These measures should cover the status, duties and privileges of foreign correspondents and should include protection from arbitrary expulsion. They impose a corresponding duty of accurate reporting.

B. Measures to secure responsibility of the press and other mass media

It is the duty of the press and other mass media to discharge their functions with a sense of responsibility towards the community and towards the individual citizens. For this purpose, it is desirable to institute (where not already done):

(a) Professional training for journalists under the responsibility of editors and journalists;

(b) A professional code of ethics for journalists; this should cover *inter alia* such matters as accurate and well balanced reporting, rectification of inaccurate information, clear distinction between reported information and comments, avoidance of calumny, respect for privacy, respect for the right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights;

(c) Press councils empowered to investigate and even to censure instances of unprofessional conduct with a view to the exercising of self-control by the press itself.

C. Measures to protect the individual against interference with his right to privacy

1. There is an area in which the exercise of the right of freedom of information and freedom of expression may conflict with the right to privacy protected by Article 8 of the Convention on Human Rights. The exercise of the former right must not be allowed to destroy the existence of the latter.

2. The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-relevation of irrelevant and embarrassing facts, unauthorized publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially. Those who, by their own actions, have encouraged indiscreet revelations about which they complain later on, cannot avail themselves of the right to privacy.

[1] For the text of the European Convention on Human Rights, see *Yearbook on Human Rights for 1950*, pp. 420-426.

3. A particular problem arises as regards the privacy of persons in public life. The phrase "where public life begins, private life ends" is inadequate to cover this situation. The private lives of public figures are entitled to protection, save where they may have an impact upon public events. The fact that an individual figures in the news does not deprive him of a right to a private life.

4. Another particular problem arises from attempts to obtain information by modern technical devices (wire-tapping, hidden microphones, the use of computers, etc.), which infringe the right to privacy. Further consideration of this problem is required.

5. Where regional, national or international computer-data banks are instituted the individual must not become completely exposed and transparent by the accumulation of information referring even to his private life. Data banks should be restricted to the necessary minimum of information required for the purposes of taxation, pension schemes, social security schemes and similar matters.

6. In order to counter these dangers, national law should provide a right of action enforceable at law against persons responsible for such infringements of the right to privacy.

7. The right to privacy afforded by Article 8 of the Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media. National legislations should comprise provisions guaranteeing this protection.

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS RELATING TO HUMAN RIGHTS*

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)

The United Kingdom acceded to the Convention on 30 January 1970.

At the end of 1970, the following 75 States were parties to the Convention: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian SSR, Cambodia, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Ethiopia, Federal Republic of Germany, Finland, France, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Jamaica, Jordan, Laos, Lebanon, Liberia, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Republic of Viet-Nam, Romania, Saudi Arabia, Spain, Sweden, Syria, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, Upper Volta, Uruguay, Venezuela, Yugoslavia and Zaire.

2. *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (New York, 1949; entered into force on 25 July 1951) (see *Yearbook on Human Rights for 1949*, pp. 388-391)

During 1970, no States became parties to the Convention.

At the end of 1970, the following 39 States were parties to the Convention: Albania, Algeria, Argentina, Belgium, Brazil, Bulgaria, Byelorussian SSR, Ceylon, Cuba, Czechoslovakia, France, Guinea, Haiti, Hungary, India, Iraq, Israel, Japan, Kuwait, Libya, Malawi, Mali, Mexico, Norway, Pakistan, Philippines, Poland, Republic of Kuwait, Romania, Singapore, South Africa, Spain, Syria, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela and Yugoslavia.

3. *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)

Paraguay and Uruguay acceded to the Convention on 1 April and 22 September 1970 respectively.

At the end of 1970, the following 60 States were parties to the Convention: Algeria, Argentina, Australia, Austria, Belgium, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Colombia, Congo, Cyprus, Dahomey, Denmark, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France, Gabon, Gambia, Ghana, Greece, Guinea, Holy See, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Monaco, Morocco, Netherlands, New Zealand, Niger, Nigeria, Norway, Paraguay, Peru, Portugal, Senegal, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, Uruguay, Yugoslavia, Zaire, Zambia.

4. *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 1970, the following States became parties to the Convention by the instruments and on the dates indicated: Bolivia (ratification, 22 September), Federal Republic of Germany (accession, 4 November) and Swaziland (accession, 22 July).

At the end of 1970, the following 68 States were parties to the Convention: Afghanistan, Albania, Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Byelorussian SSR, Canada, Central African Republic, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France,

* Concerning the status of these agreements at the end of 1969, see *Yearbook on Human Rights for 1969*, pp. 401-405. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of UNESCO, the Organization of American States and the Council of Europe was furnished by the International Labour Office, UNESCO, the Pan American Union and the Secretariat-General of the Council of Europe. The information concerning the Geneva Conventions of 12 August 1949 was taken from the *Annual Report 1970*, of the International Committee of the Red Cross.

Gabon, Ghana, Greece, Guatemala, Haiti, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Laos, Lebanon, Madagascar, Malawi, Malta, Mauritius, Mongolia, Nepal, New Zealand, Nicaragua, Niger, Norway, Pakistan, Philippines, Poland, Republic of Korea, Romania, Senegal, Sierra Leone, Swaziland, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, Yugoslavia and Zaire.

5. *Convention on the International Right of Correction* (New York, 1952; entered into force on 24 August 1962) (see *Yearbook on Human Rights for 1952*, pp. 373-375)

During 1970, no States became parties to the Convention.

At the end of 1970, the following 9 States were parties to the Convention: Cuba, El Salvador, Ethiopia, France, Guatemala, Jamaica, Sierra Leone, United Arab Republic and Yugoslavia.

6. *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 1970, no States became parties to the Convention.

At the end of 1970, the following 66 States were parties to the Convention: Afghanistan, Albania, Algeria, Australia, Austria, Belgium, Brazil, Burma, Byelorussian SSR, Canada, Ceylon, China, Cuba, Denmark, Ecuador, Ethiopia, Finland, France, Greece, Guinea, Hungary, India, Iraq, Ireland, Israel, Italy, Jamaica, Jordan, Kuwait, Liberia, Libya, Madagascar, Malawi, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Republic of Viet-Nam, Romania, Sierra Leone, South Africa, Sudan, Sweden, Switzerland, Syria, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, United Republic of Tanzania, United States and Yugoslavia.

7. *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)

Ecuador ratified the Convention on 2 October 1970.

At the end of 1970, the following 22 States were parties to the Convention: Algeria, Belgium, Botswana, Denmark, Ecuador, Finland, France, Guinea, Ireland, Israel, Italy, Liberia, Luxembourg, Netherlands, Norway, Republic of Korea, Sweden, Trinidad and Tobago, Tunisia, Uganda, United Kingdom and Yugoslavia.

8. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (Geneva 1956; entered into force on 30 April 1957) (see *Yearbook on Human Rights for 1956*, pp. 289-291)

During 1970, the Central African Republic and the Ivory Coast acceded to the Convention on 20 December and 10 December respectively.

At the end of 1970, the following 76 States were parties to the Convention: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cambodia, Canada, Ceylon, China, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Federal Republic of Germany, Finland, France, Ghana, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Jordan, Kuwait, Laos, Luxembourg, Malawi, Malaysia, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Romania, San Marino, Sierra Leone, Spain, Sudan, Sweden, Switzerland, Syria, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, United Republic of Tanzania, United States of America and Yugoslavia.

9. *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)

Swaziland acceded to the Convention on 18 September 1970.

At the end of 1970, the following 43 States were parties to the Convention: Albania, Argentina, Australia, Austria, Brazil, Bulgaria, Byelorussian SSR, Canada, Ceylon, China, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Fiji, Ghana, Guatemala, Hungary, Ireland, Israel, Jamaica, Malawi, Malaysia, Malta, Mauritius, Netherlands, New Zealand, Norway, Poland, Romania, Sierra Leone, Singapore, Swaziland, Sweden, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United Republic of Tanzania and Yugoslavia.

10. *Convention on the Reduction of Statelessness* (New York, 1961; not yet in force) (see *Yearbook on Human Rights for 1961*, pp. 427-430)

During 1970, no States became parties to the Convention.

At the end of 1970, Sweden and the United Kingdom were parties to the Convention.

11. *Convention on Consent to Marriages, 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 1970, Argentina, Brazil and the United Kingdom acceded to the Convention on 26 February, 11 February and 9 July respectively.

At the end of 1970, the following 25 States were parties to the Convention: Argentina, Austria, Brazil, Cuba, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Federal Republic of Germany, Finland, Mali, Netherlands, New Zealand, Niger, Norway, Philippines, Poland, Spain, Sweden, Trinidad and Tobago, Tunisia, United Kingdom, Upper Volta, Western Samoa and Yugoslavia.

12. *International Convention on the Elimination of all Forms of Racial Discrimination* (New York, 1965; entered into force on 4 January 1969) (see *Yearbook on Human Rights for 1965*, pp. 389-394)

During 1970, the following States became parties to the Convention by the instruments and on the dates indicated: Bolivia (ratification, 22 September), Canada (ratification, 14 October), Finland (ratification, 14 July), Greece (ratification, 18 June), Morocco (ratification, 18 December), Norway (ratification, 6 August) and Romania (accession, 15 September).

At the end of 1970, the following 46 States were parties to the Convention: Argentina, Bolivia, Brazil, Bulgaria, Byelorussian SSR, Canada, China, Costa Rica, Cyprus, Czechoslovakia, Ecuador, Federal Republic of Germany, Finland, Ghana, Greece, Holy See, Hungary, Iceland, India, Iran, Iraq, Kuwait, Libya, Madagascar, Mongolia, Morocco, Niger, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Romania, Sierra Leone, Spain, Swaziland, Syria, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, Uruguay, Venezuela and Yugoslavia.

13. *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 1970, the following States became parties to the Covenant by the instruments and on the dates indicated: Bulgaria (ratification, 21 September), Libya (accession, 15 May), Senegal (ratification, 6 July) and Uruguay (ratification, 1 April).

At the end of 1970, the following 9 States were parties to the Covenant: Bulgaria, Colombia, Costa Rica, Cyprus, Ecuador, Libya, Syria, Tunisia and Uruguay.

14. *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 1970, the following States became parties to the Covenant by the instruments and on the dates indicated: Bulgaria (ratification, 21 September), Libya (accession, 15 May), Senegal (ratification, 6 July) and Uruguay (ratification, 1 April).

At the end of 1970, the following 9 States were parties to the Covenant; Bulgaria, Colombia, Costa Rica, Cyprus, Ecuador, Libya, Syria, Tunisia and Uruguay.

15. *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)

Senegal and Uruguay ratified the Protocol on 6 July and 1 April 1970 respectively.

At the end of 1970, the following 4 States were parties to the Protocol: Colombia, Costa Rica, Ecuador and Uruguay.

16. *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 1970, the following States acceded to the Protocol on the dates indicated: Congo (10 July), Dahomey (6 July), Ivory Coast (16 February), Niger (2 February), Paraguay (1 April) and Uruguay (22 September).

At the end of 1970, the following 43 States were parties to the Protocol: Algeria, Argentina, Belgium, Botswana, Cameroon, Canada, Central African Republic, Congo, Cyprus, Dahomey, Denmark, Ecuador, Ethiopia, Federal Republic of Germany, Finland, Gambia, Ghana, Greece, Guinea, Holy See, Iceland, Ireland, Israel, Ivory Coast, Liechtenstein, Netherlands, Niger, Nigeria, Norway, Paraguay, Senegal, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Yugoslavia and Zambia.

17. *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* (New York, 1968; entered into force on 11 November 1970) (see *Yearbook on Human Rights for 1968*, pp. 459-460).

During 1970, the following States ratified the Convention on the dates indicated: Czechoslovakia (13 August), Nigeria (1 December) and Yugoslavia (9 June).

At the end of 1970, the following 11 States were parties to the Convention: Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Mongolia, Nigeria, Poland, Romania, Ukrainian SSR, Union of Soviet Socialist Republics and Yugoslavia.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Forced Labour Convention, 1930* (Convention No. 29; entered into force on 1 May 1932)

No ratifications were registered in 1970.

At the end of 1970, 105 States were parties to the Convention.

2. *Freedom of Association and Protection of the Right to Organize Convention, 1948* (Convention No. 87; entered into force on 4 July 1950) (see *Yearbook on Human Rights for 1948*, pp. 427-430)

No ratifications were registered in 1970.

At the end of 1970, 77 States were parties to the Convention.

3. *Right to Organize 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)

No ratifications were registered in 1970.

At the end of 1970, 90 States were parties to the Convention.

4. *Equal Remuneration Convention, 1951* (Convention No. 100; entered into force on 23 May 1953) (see *Yearbook on Human Rights for 1951*, pp. 469-470)

During 1970, Cameroon and the Sudan ratified the Convention on 25 May and 22 October respectively.

At the end of 1970, 71 States were parties to the Convention.

5. *Social Security (Minimum Standards) Convention, 1952* (Convention No. 102; entered into force on 27 April 1955) (see *Yearbook on Human Rights for 1952*, pp. 377-389)

No ratifications were registered in 1970.

At the end of 1970, 20 States were parties to the Convention.

6. *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)

The Sudan ratified the Convention on 22 October 1970.

At the end of 1970, 89 States were parties to the Convention.

7. *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 1970, the following States ratified the Convention on the dates indicated: Finland (22 April), Peru (10 August), Sudan (22 October) and Trinidad and Tobago (26 November).

At the end of 1970, 75 States were parties to the Convention.

8. *Social Policy (Basic Aims and Standards) Convention, 1962* (Convention No. 117; entered into force on 23 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 391-394)

During 1970, the following States ratified the Convention on the dates indicated: Republic of Viet-Nam (7 December), Sudan (22 October) and Tunisia (14 April).

At the end of 1970, 22 States were parties to the Convention.

9. *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).

The Republic of Viet-Nam ratified the Convention on 7 December 1970.

At the end of 1970, 24 States were parties to the Convention.

10. *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 1970, the following States ratified the Convention on the dates indicated: Cameroon (25 May), Denmark (17 June), Panama (19 June), Republic of Viet-Nam (7 December), Spain (28 December) and Sudan (22 October).

At the end of 1970, 37 States were parties to the Convention.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. *Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto* (Lake Success, 1950; entered into force on 21 May 1952) (see *Yearbook on Human Rights for 1950*, pp. 411-415)

During 1970 Bolivia, Japan and Romania became parties to the Agreement on 29 September, 17 June and 24 November respectively.

At the end of 1970, 61 States were parties to the Agreement.

2. *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 1970, Hungary and Mauritius became parties to the Convention on 23 October and 20 August respectively.

At the end of 1970, 59 States were parties to the Convention.

3. *Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto* (The Hague, 1954; entered into force on 7 August 1956) (see *Yearbook on Human Rights for 1954*, pp. 308-309)

During 1970, the following States became parties to the Convention and/or the Protocol on the dates indicated: Kuwait (Protocol, 17 February), Yemen (Convention and Protocol, 6 February), Sudan (Convention, 23 July).

At the end of 1970, the number of States Parties to the Convention was 62 and that to the Protocol was 56.

4. *Convention concerning the Exchange of Official Publications and Government Documents between States* (Paris, 1958; entered into force on 30 May 1961) (see *Yearbook on Human Rights for 1964*, p. 434)

During 1970, Nigeria and Poland became parties to the Convention on 22 July and 12 February respectively.

At the end of 1970, the number of States Parties to the Convention was 32.

5. *Convention concerning the International Exchange of Publications* (Paris, 1958; entered into force on 23 November 1961) (see *Yearbook on Human Rights for 1960*, p. 434)

During 1970 Nigeria and Poland became parties to the Convention on 22 July and 12 February respectively.

At the end of 1970, the number of States Parties to the Convention was 33.

6. *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 1970, the following States became parties to the Convention on the dates indicated: Cyprus (9 June), Luxembourg (20 January), Mauritius (20 August) and Swaziland (8 October).

At the end of 1970, the number of States Parties to the Convention was 57.

7. *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)

During 1970, Cyprus became a party to the Protocol on 9 June.

At the end of 1970, the number of States Parties to the Protocol was 20.

IV. ORGANIZATION OF AMERICAN STATES

1. *Inter-American Convention on the Granting of Political Rights to Women, 1948* (Bogotá, 1948; entered into force on 22 April 1949) (see *Yearbook on Human Rights for 1948*, pp. 438-439)

Guatemala ratified the Convention on 16 December 1970.

2. *Protocol of Amendment to the Charter of the Organization of American States, 1967* (Buenos Aires, 1967; entered into force on 27 February 1970) (see *Yearbook on Human Rights for 1967*, pp. 391-394)

During 1970, the following States ratified the Protocol on the dates indicated: Barbados (16 March), Bolivia (27 February), Colombia (27 February), Ecuador (30 September), Haiti (19 June), Honduras (27 February), Jamaica (27 February) and Peru (27 February).

3. *American Convention on Human Rights, 1969* (San José, 1969; not yet in force) (see *Yearbook on Human Rights for 1969*, pp. 390-400)

Costa Rica ratified the Convention on 8 April 1970.

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)

The denunciation of this Convention by Greece on 12 December 1969 became effective on 13 June 1970.

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)

The denunciation of this Protocol by Greece on 12 December 1969 became effective on 13 June 1970.

3. *Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Conferring upon the European Court of Human Rights Competence to Give Advisory Opinions* (Strasbourg, 1963; entered into force on 21 September 1970) (see *Yearbook on Human Rights for 1963*, p. 424)

Belgium ratified the Protocol on 21 September 1970.

4. *Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 29, 30 and 34 of the Convention* (Strasbourg, 1963; entered into force on 21 September 1970) (see *Yearbook on Human Rights for 1963*, p. 425)

Belgium ratified the Protocol on 21 September 1970.

5. *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol thereto* (Strasbourg, 1963; entered into force on 2 May 1968) (see *Yearbook on Human Rights for 1963*, pp. 425-426)

Belgium ratified the Protocol on 21 September 1970.

6. *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; entered into force on 21 September 1970) (see *Yearbook on Human Rights for 1966*, pp. 462-463)

Belgium ratified the Protocol on 21 September 1970.

7. *European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights* (London, 1969; not yet in force) (see *Yearbook on Human Rights for 1969*, pp. 383-385)

Cyprus, Luxembourg and Norway ratified the Agreement on 23 November, 10 September and 1 July 1970 respectively.

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 1970, the following States became parties to the Conventions, by the instruments and on the dates indicated: Chad (accession, 5 August 1970, with effect from 5 February 1971), Mauritius (declaration of continuity, 18 August 1970, with effect from 12 March 1968) and Yemen (accession, 16 July 1970, with effect from 16 January 1971).

At the end of 1970, the number of States bound by the four Geneva Conventions was 128.

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