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PERIODIC REPORTS ON HUMAN RIGHTS

Summary Prepared by the Secretary-General

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- Note: 1. The summaries covering articles 9-30 of the Universal Declaration and the right of peoples to self-determination will be issued in Addenda to this document, as follows: Articles 9-15 in Add.1; Articles 16-21 in Add.2; Articles 22-30 and the right of peoples to self-determination in Add.3.
2. Reports of Governments received too late for inclusion in the above documents will, if possible, be summarized in Add.4 et seq. (see paragraph 16 below).

PERIODIC REPORTS ON HUMAN RIGHTS

Summary Prepared by the Secretary-General

I. INTRODUCTION

A. Decisions of the Commission on Human Rights and the Economic and Social Council

1. The Economic and Social Council, in resolution 624 B (XXII) of 1 August 1956 endorsed, with some amendments, recommendations of the Commission on Human Rights, adopted at its twelfth session (March 1956), in which it initiated a system of periodic reporting by governments.

2. The Commission, in initiating such a system, decided to consider general developments and progress achieved in the field of human rights and measures taken to safeguard human liberty in States Members of the United Nations and of the specialized agencies. The rights to be considered were those enumerated in the Universal Declaration of Human Rights and the right of peoples to self-determination. The basis for the Commission's consideration would be the information furnished for publication in the Yearbook on Human Rights and reports from Member States and from Specialized agencies. The purpose of the Commission's consideration was to transmit to the Council comments, conclusions and recommendations of an objective and general character in accordance with the Charter of the United Nations. (E/2844, paragraph 23, Resolution I, operative paragraph 1).

3. In resolution 624 B (XXII) the Council consolidated into a single resolution two draft resolutions recommended by the Commission on annual reports and studies of specific rights or groups of rights. The amendments relating to the reporting system which were made by the Council are indicated where appropriate.

4. The Council requested States Members of the United Nations and the specialized agencies to transmit to the Secretary-General every three years - not annually as recommended by the Commission - a report describing developments and progress achieved during the preceding three years in the field of human rights and measures taken to safeguard human liberty in their metropolitan area

and non-self-governing territories. The reports were to deal with the rights enumerated in the Universal Declaration and the right of peoples to self-determination, and to supplement the information furnished for publication in the Yearbook and to make reference to any relevant parts of reports already submitted to another organ of the United Nations or to a specialized agency. Governments were also invited to include in their reports a separate section on the right or group of rights as might from time to time be selected for special study by the Commission on Human Rights and approved by the Council. The first series of reports was to cover the years 1954, 1955 and 1956. The first subject approved for study was the right of everyone to be free from arbitrary arrest, detention and exile.

5. The Council requested the Secretary-General to prepare and forward to governments suggestions which might serve as a guide for the preparation of the reports on a topical basis. This had not been included in the Commission's draft resolution. The Secretary-General was also asked to prepare a brief summary of the reports on the same basis for submission to the fourteenth session of the Commission on Human Rights.

6. The specialized agencies were invited, in respect of rights coming within their purview, to transmit to the Secretary-General, every three years a report on a topical basis, summarizing the information which they have received from their Member States during the preceding three years and to co-operate in the full realization of the aims set forth in the resolution.

7. The General Assembly, in resolution 1083 (XI) of 21 December 1956, approved revised estimates (A/C.5/663) of the financial implications arising out of the recommendations of the Commission and the Council.^{1/} These estimates were made and approved on the assumption that the full texts of the reports of the governments would not be printed.

8. The study on the right to be free from arbitrary arrest, detention and exile forms a separate item on the provisional agenda of the Commission. The Committee appointed by the Commission to undertake this study is submitting a separate progress report on its work (E/CN.4/763).

^{1/} E/CN.4/L.417/Rev.2/Add.1, L.418/Add.1, E/2844/Add.1 and E/2916/Add.1.

B. Reports by the Specialized Agencies

9. Letters were addressed to the ILO, UNESCO, WHO, FAO, ITU and UPU inviting them, in accordance with resolution 624 B (XXII), to transmit reports covering the years 1954-6 summarizing, in respect of rights coming within their purview, the information which they had received from their Member States. The replies of the specialized agencies are given in document E/CN.4/758 and addenda.

C. Suggestions prepared by the Secretary-General as a guide to governments

10. On 12 October 1956 the Secretary-General invited governments of States Members of the United Nations or the specialized agencies to transmit their reports for the years 1954-6 by 1 July 1957. In accordance with the Council's request in resolution 624 B (XXII) the Secretary-General included in his note verbale some general suggestions intended to assist governments in preparing their reports.

11. The suggestions of the Secretary-General were as follows:

"The resolution provides that the report is to describe developments and the progress achieved during the years 1954, 1955 and 1956 and is to deal with the rights enumerated in the Universal Declaration of Human Rights and with the right of peoples to self-determination.

1. The report might follow, as far as possible, the order of the rights as they are enumerated in the articles of the Universal Declaration to be followed by the right of self-determination.
2. The report might include information on constitutional laws or practices, on legislative provisions and regulations, customary law, usages, judicial decisions, administrative arrangements and practices and any other measures relating to or affecting each of these rights.
3. Details might be supplied on significant achievements or experiences, or on innovations and their results.
4. The report might give details of restrictions of any kind on the enjoyment of any right.
5. The report might also indicate any difficulties encountered, such as impediments of an economic or social nature or those arising out of any emergency situation.

6. In this first report each government may wish to make a succinct statement on the present status of each right even if no new development in respect thereof has taken place during the years 1954-56, with such information as may be required for the understanding of the existing conditions.

7. Texts of laws, decisions of courts and other relevant texts should be appended whenever desirable, except where they have already been supplied to the United Nations for the Yearbook on Human Rights in which case an appropriate reference to the material supplied for the Yearbook would be sufficient.

8. It will be unnecessary for governments to repeat information they have already submitted to another organ of the United Nations or to a specialized agency. The specialized agencies are being invited to transmit to the Secretary-General, every three years, a report on a topical basis, summarizing information on any right coming within their purview which they have received from their Member States. However, governments should refer to any relevant parts of any report they have already submitted to another organ of the United Nations or to a specialized agency.

9. The report should be confined as far as possible to a maximum of 40 typewritten double-spaced quarto pages, apart from texts of laws or judicial decisions which may be appended.

10. It is suggested that the special section on freedom from arbitrary arrest, detention and exile should include, as appropriate, summaries of, or extracts from, constitutional or statutory provisions, judicial decisions and administrative measures. It should specify what are regarded as legitimate grounds and proper procedures for arrest, detention and exile. It might further indicate such rights as are accorded to persons arrested, detained or subject to exile. As a useful guide in this connexion, the text of articles 9, 12, paragraphs 2 and 14, paragraph 2 (a) and (b), of the draft covenant on civil and political rights is enclosed herewith.

11. It is suggested that the special section should not, as a rule, exceed twenty typewritten double-spaced quarto pages, apart from texts of laws or judicial decisions which may be appended.

12. In the event that a government has submitted such information for the 1955 Yearbook on Human Rights, the same information need not be resubmitted in its report on human rights, but the government may, as appropriate, submit further material."

12. By 1 July 1957 very few reports had been received and the Secretary-General wrote a second Note to governments inviting them to transmit their reports by 30 September 1957. The Secretary-General stated in this Note that he regretted he would not be able to include in the summary information contained in reports submitted after that date.

C. Number and Nature of Reports Received

13. As few reports had been received by the second date of 30 September 1957, the Secretary-General thought, despite the above statement, that it would be more helpful to the Commission if the summary covered the maximum possible number of reports. In order to have a document for the fourteenth session of the Commission, 15 December 1957 was taken as the final deadline. Reports received up to that date in the working languages of the Secretariat have been included.

14. By 15 December 1957 the following twenty-eight reports had been received:

<u>Country</u>	<u>Date of receipt</u>
Australia	14 August 1957 and 20 December 1957
Austria	8 October and 11 November 1957
Brazil (2 separate reports)	22 July 1957 (Report on education and cultural rights); and 1 August 1957 (main report)
Cambodia	8 February 1957
Ceylon	30 August 1957
Chile	5 December 1957
China	10 July 1957
Czechoslovakia	16 October 1957
Denmark	9 October 1957
Dominican Republic	20 November 1957
Federal Republic of Germany	23 October 1957
Finland (2 separate reports)	17 July 1957 (report on arbitrary arrest, detention and exile); and 23 September 1957 (main report)
France	9 December 1957
Hungary	2 October 1957
Israel	7 November 1957
Luxembourg	25 September 1957
Mexico	17 October 1957
Morocco (2 separate reports)	16 April 1957; and 15 November 1957 (main report)

<u>Country</u>	<u>Date of receipt</u>
Nepal	15 March 1957 and 2 August 1957
Norway	7 October 1957
Pakistan	19 July 1957
Panama	21 January 1957
Philippines	22 July and 28 October 1957
Poland	14 November 1957
Portugal	17 October 1957
Sweden	8 March 1957
Ukrainian SSR	29 November 1957
United Kingdom of Great Britain and Northern Ireland	30 September and 21 October 1957

15. In a letter of 24 November 1956 the Vatican Secretariat of State informed the Secretariat that it "regrets that by reason of the special nature of the Holy See and Vatican City State such investigations and reports are not possible".

16. Reports received after 30 September 1957 in languages other than the working languages of the Secretariat include: Austria (for 1956 only), Dominican Republic, Federal Republic of Germany, Mexico, Portugal and the Ukrainian SSR. Reports received after 15 December include Australia (for 1956 only), Japan, Spain and United States of America. These will, if possible, be summarized for the Commission in addenda to this document.

17. The reports received vary greatly both as to form and content. Several are reports specially drafted in view of the Council's specific request in resolution 624 B (XXII); some, in accordance with the resolution, consist of references to contributions to the Yearbooks on Human Rights for 1954, 1955 and 1956, and to reports submitted for other organs. A number of governments classify the material on which they are reporting under the pertinent article of the Declaration, or, in some cases, under a number of articles grouped together; others make no classification in terms of articles of the Declaration. Some governments report only on developments during the period 1954-6. Others, following one of the suggestions of the Secretary-General, concentrate mainly on the present status of the various rights enumerated in the Universal Declaration, or combine developments during 1954-6 with an account of the present status in

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such a way that it is difficult to separate the events of 1954-6 from the background information without distorting the nature of the report.

18. Since the reports themselves will not be issued, the Commission may find it helpful to have a very brief indication as to the form of the various reports submitted and dealt with in the summary. The contents are, of course, covered by the summary itself.

19. Reports from the twenty-three governments listed below are included in this summary. For reasons of brevity the name of the country has been used throughout to denote "The Government of".

Australia refers to the contributions to the Yearbooks on Human Rights for 1954, 1955 and 1956;^{1/} and to the report submitted to UNESCO on articles 19, 26 and 27 of the Declaration.

Austria refers to the contributions to the Yearbook on Human Rights for 1954, 1955 and 1956.^{1/}

Brazil submitted two reports: one on educational and cultural rights prepared by the National Department of Education of the Ministry of Education and Culture; and one prepared by the Ministry of Justice and the Interior for inclusion in the Yearbook on Human Rights.

Cambodia's report contains certain general information and information classified under articles 8, 9, 11, 15, 19, 22 and 26.

Ceylon reports on the years 1954, 1955 and 1956, and the information submitted is the same as that contributed to the Yearbooks on Human Rights for those years.

Chile reports on developments during 1954-6.

China's report contains general information; information classified under articles 1 and 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 20, 24 and 25, paragraph 2; information on recent judicial measures; and additional information on arbitrary arrest, detention and exile.

^{1/} The contribution for 1956 has not been included (see paragraph 16).

Czechoslovakia's report contains information classified under articles 6-12, 21 and 24. The Government also refers to the contributions for the Yearbooks on Human Rights for 1955 and 1956, and to a report on developments in family, child and youth welfare and in the organization and administration of social welfare services of 1956.

Denmark's report contains certain general information and refers to the contributions to the Yearbooks on Human Rights for 1954 and 1955.

Finland submitted two reports: one dealing with arbitrary arrest, detention and exile; and one containing information classified under articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22-25, 29.

France's report contains information relating to the metropolitan territory and the overseas territories classified under articles 1 and 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 28-30; and annexes containing further information relating to articles 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20, 21, 23, 24 and 28-30. The Government refers to its report to UNESCO relating to articles 19, 26 and 27.

Hungary's report contains sections giving the historical background and developments in the years 1954-6.

Israel refers to the contribution for the Yearbook on Human Rights for 1956.

Luxembourg's report contains information classified under articles 3, 13, 14, 22 and 23, and a special section on arbitrary arrest, detention and exile.

Morocco submits two reports: one giving the general background of Moslem law, and a second report in three sections; one containing information classified under articles 1, 2, 3, 4, 5, 6, 7, 8, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28-30; one on arbitrary arrest, detention and exile; and one on the right of peoples to self-determination.

Nepal reports on two acts enacted in 1955 and 1956.

Norway's report contains information relating to most of the articles of the Declaration.

Pakistan reports on developments during 1954-6.

Panama's report deals mainly with the question of arbitrary arrest, detention and exile.

The Philippines' report contains information classified under articles 1, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27.

Poland's report relates mainly to arbitrary arrest, detention and exile and deals with articles 9, 12 and 14 of the Draft Covenant on Civil and Political Rights.

Sweden refers to a letter of 11 May 1948 commenting on the draft declaration on human rights and draft covenant on human rights as elaborated at that date; to a letter of 15 May 1956 on religious rights; to a letter of 4 March 1954 commenting on the draft covenants as elaborated at that date; to statements by Swedish representatives in the Third Committee of the General Assembly in 1954 and 1955; to a bill relating to the accession of Sweden to the European Convention for the Protection of Human Rights and Fundamental Freedoms; to a letter of 13 July 1956 transmitting a memorandum on social welfare services and to material submitted to the Yearbook on Human Rights on this question; to a letter of 5 December 1956 as significant publications relating to human rights.

The United Kingdom of Great Britain and Northern Ireland reports with respect to the metropolitan territory, on all articles of the Declaration except 1, 2 and 30 on which the Government states that no separate and specific statements seem to be required. Non-self-governing territories are dealt with separately.

20. Some of the above governments also refer, in their reports, to statements on arbitrary arrest, detention and exile submitted in accordance with Council resolution 303 H (XI) for inclusion in the Yearbook on Human Rights for 1955. These are listed separately under article 9 below.

D. Preparation of the Summary

21. The reports from the above twenty-three governments are classified and summarized:

1. under each article of the Declaration;
2. under subject-headings under each article; and
3. by country in the English alphabetical order of the name of the government reporting.

The subject-headings under each article are basically derived from the information contained in the reports.

22. In view of the nature of the material reported relating to articles 1, 2 and 7, and to articles 22 and 25 these three articles have been treated together in the summary. No information was reported relating to article 30.

23. Information which relates to Trust or Non-Self-Governing Territories appears immediately after that relating to the metropolitan power concerned.

24. Contributions to the Yearbooks on Human Rights for the years 1954, 1955 and 1956 under review have been summarized only if governments specifically refer to them in their reports. Where governments refer to Yearbook contributions prior to these dates, the material has not, as a rule, been summarized but the reference to it is maintained.

25. Where governments have themselves classified the material under articles of the Declaration, the classification has generally been maintained. Where no classification in terms of articles of the Declaration was made or where governments reported under a number of articles grouped together, the information has been included under the article of the Declaration considered most appropriate. Cross references were necessary in many cases.

26. In summarizing the reports no attempt has been made to separate information relating to 1954-6 from that giving background information on the present status of the rights since, in some cases, governments had so closely interlinked the two. At the beginning of each article there is a short introduction in which the subject-headings used are listed and a further heading entitled "Developments during 1954-6" appears. Under this the governments who have reported developments during the period are listed with precise references to the paragraphs in which such developments are summarized.

27. Article 9 of the Declaration which deals with the right to be free from arbitrary arrest, detention and exile presents a particular problem in view of the amount of material involved and of the duplication with the study currently being undertaken by the Committee appointed by the Commission for this purpose. The material includes the statements submitted for the Yearbook on Human Rights for 1955 under Council resolution 303 H (XI) if specific reference to such statements was made by the governments in their reports. It also includes material to which governments, in accordance with resolution 624 B (XXII), devoted a special section of their reports. All this material has been circulated to the Committee appointed to study this right. Pending further guidance from the Commission for similar cases in the future the Secretary-General has, in this summary, very briefly indicated the contents of the material which governments have reported, and summarized only the developments which took place during the period 1954-6.

28. Only two governments dealt with the right of peoples to self-determination. A section on this question appears after the article-by-article summary. Since the material is so scanty, subject-headings have not been used in this case.

29. Several governments reported information of a general character, some relating to the present status of human rights in the country, and some to general developments during the period 1954-6. Ratifications of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 were also reported. Such information is summarized in a General Section which precedes the article-by-article summary. Information relating to other international instruments, which deal with particular rights, is included under the appropriate article.

30. The Commission may find a certain lack of uniformity in the summary of the information contained in the various reports. This stems from the fact that some governments submitted statements of a summary nature, which were difficult to summarize further, while some governments furnished information which could not be summarized briefly, if at all, without affecting the substance of the information. Moreover, the Secretariat has avoided making any evaluation of the substance of the reports.

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E. Observations and Suggestions by the Secretary-General

31. The Secretary-General is aware that there are defects in the present summary which, as he explained in paragraph 13 above, has had to be prepared rather hurriedly, and is based on reports of a widely divergent character.

32. This raises two questions which the Commission may wish to consider: the question of the time to be allowed governments for submitting the reports and the Secretary-General for preparing the summary on a topical basis; and the question of the guidance to be given to governments in preparing their reports.

33. The Secretary-General believes that a minimum of six to eight months is required in order to prepare an adequate summary of the reports, especially when the General Assembly's regular session falls within that period and when it may be anticipated that several reports will be submitted in languages which are not the official languages of the United Nations or the working languages of the Secretariat. Allowance must also be made for the reproduction and translation of the document to be submitted to the Commission in accordance with the requirements of the six weeks rule. If the present cycle of the reporting system is to be maintained, this means that governments should submit their reports, at the latest, six months after the end of the last of the three years on which they are reporting.

34. The Secretary-General believes that it would be helpful if, before the next series of reports is requested, a more detailed plan to guide governments in preparing their reports could be drawn up. This would not only ensure greater uniformity in the reports but would assist the Secretariat in preparing the summary on a topical basis and in making it as brief as possible. The Commission might itself approve such a plan at its fifteenth session. The subject-headings which appear under the various articles in this summary and which were derived from this series of reports by governments might be used as the nucleus of such a plan.

35. It may also be noted, in this connexion, that in the case of UNESCO the plan drawn up as a guide to governments for articles 19, 26 and 27 was approved by a Working Party of the Executive Board specially constituted for that purpose.

36. The Secretary-General assumes that in the future the reports will be restricted to developments during the three-year period under review and will not include statements on the present status of rights.

37. The Commission may also wish to take a decision on what should be done in the future with respect to the right or rights selected for special study by the Commission. The Secretary-General has explained how he has dealt with material relating to article 9 in this summary in paragraph 27. In this series of reports the question of duplication of material presented a particular problem since statements on arbitrary arrest, detention and exile had already been requested under Council resolution 303 H (XI) and submitted for inclusion in the Yearbook on Human Rights for 1955. The Council subsequently decided, in resolution 665 D (XXIV), that these statements should not be so published. The Committee on the Yearbook on Human Rights has recommended to the Commission that these statements be published from time to time in the form of a supplementary volume to the Yearbook; the first of such volumes would contain the statements on arbitrary arrest, detention and exile (E/CN.4/756, draft resolution part B). These statements are being used in the preparation of country monographs which will serve as working papers for the study on the right to be free from arbitrary arrest, detention and exile.

II. Summary on a Topical Basis

A. General Section

38. This section contains only information of a general character reported by Governments and includes:

1. General statements on the present status of human rights
2. General statements relating to the period 1954-1956:
 - (a) Developments
 - (b) Progress
 - (c) Difficulties

1. General statements on the present status of human rights

39. Cambodia states that the rights, freedoms and duties of Cambodians are set forth in Chapter II of the Constitution adopted in 1947. (The provisions are indicated under the pertinent article of the Declaration below.)

40. Chile reports that Chilean legislation is substantially in conformity with the principles embodied in the Universal Declaration and that there have in consequence been few developments in either the legislative or judicial fields. The Government lists among developments of interest a Decree of 20 August 1953 giving effect to the Constitution of UNESCO as a law of the Republic (Decree No. 420). (A similar development is mentioned under articles 1, 2 and 7 below).

41. China reports that since its establishment the Republic has developed its governmental institutions and enacted its laws in accordance with the principles of democratic government and the rule of law. Human rights are guaranteed in the Constitution and their protection is fully assured under the organic law of the nation faithfully upheld by both the Government and the people. The constitutional guarantee of human rights is further strengthened by the fact that the highest executive organ in the land is responsible to the legislative yuan for its administrative actions and cannot therefore issue any executive orders inconsistent with the law. (Some further details are given under article 21 below.)

42. The Government reports further, that the Republic not only observes, in the spirit of its laws, the Universal Declaration but has included in the Constitution a specific provision that the basic purposes of the United Nations Charter should

constitute the guiding principles in the development of friendly relations with other countries in the interest of world peace (article 141). This shows that the legal system is in keeping with both the Charter and the Universal Declaration.

43. The Government also states that civil rights are cherished as an essential condition for the realization of the ideal of government of the people, for the people and by the people. Governmental policies aim at promoting human rights and advancing the public interest. What is contained in the report represents only some of the major legal provisions in the field.

44. Czechoslovakia states that it is a country where human rights are observed consistently and where all activities in the sphere of economy, politics, social security, legislation, etc. are designed to serve the welfare and needs of the people.

45. The Government also states that the Penal Code and rules of penal procedure apply only to persons who have in some manner committed a serious offence against society. At the same time it is imbued primarily by humanitarian objectives in the interest of the observance of the civil rights and freedoms guaranteed by the Constitution and in the interest of the education of citizens for the fulfilment of their civic duties.

46. Denmark reports that it co-operated wholeheartedly in the adoption of the Universal Declaration, the human rights and fundamental freedoms being embodied as early as 1849 in the first liberal Constitution of Denmark and in Danish legislation of long-standing. The Government refers to the Constitution of 5 June 1953 at present in force superseding that of 5 June 1915 (the provisions are indicated under the appropriate article of the Declaration below.

47. The Government also reports its ratification on 31 March 1953 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 with a Protocol of 20 March 1952, pointing out that this Convention provides for legal protection on an international basis of human rights and fundamental freedoms in States Members of the Council of Europe. The Government states that it has recognized the competence of the European Commission of Human Rights set up in pursuance of the Convention to receive

petitions from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the Contracting Parties of the rights set forth in this Convention. The Government has also recognized the competence of the proposed European Court of Human Rights as compulsory ipso facto and without special agreement.

48. Hungary reports that after World War II, the most urgent task was to change the situation with respect to human rights brought about by previous Governments who had suppressed fundamental rights, deporting and sentencing to death thousands of people. The Government refers to Law No. 1946:I on the form of government and quotes the Preamble, under which the Republic secures to its citizens the natural and inalienable rights of man and to the Hungarian people an ordered community life and peaceful collaboration with other peoples. The natural and inalienable rights of citizens are, in particular: personal freedom, right to a life free from oppression, fear and want, free expression of thought and opinion, free exercise of religion, the right of association and assembly, the right to property, personal safety, work, and a decent standard of living, the right to a liberal education and the right to participate in the government of the State and of self-governing institutions. No citizen may be deprived of these rights except by due process of law, and they are guaranteed without any distinction.^{1/}

49. The Government gives a brief summary of the legislation enacted during the years 1945-1947 which, it states, was prompted by the desire to make good for the violations of human rights prior to that time. (The details are included under the pertinent articles of the Declaration below.)

50. The Government refers also to the Constitution (Law No. 1949:XX) as an important landmark in the field of the development of human rights in Hungary and states that the rights set forth therein correspond to those included in the Universal Declaration. (The provisions are indicated under the pertinent articles of the Declaration below). These basic freedoms are, according to article 58 of the Constitution assured to every working man living in Hungary.

1/ English text from the Yearbook on Human Rights for 1946, p. 150.

The State creates the material conditions and safeguards for their full realization. Reference is also made to Law No. 1950:V on the safeguarding of peace (see under articles 3 and 19).

51. The Government points out that under the Peace Treaty enacted into Law No. 1947: XVIII (Part II, article 1, paragraph 1), Hungary is obliged to take all measures necessary to secure to all persons under her jurisdiction the enjoyment of human rights and fundamental freedoms (Law No. 1947). Similar obligations were assumed under the United Nations Charter enacted into Law No. 1956.I.

52. Morocco states that after a period of comparative stagnation similar to that experienced by all the Middle Eastern countries and occasioned by unfavourable historical circumstances, Morocco became less self-contained and more receptive to modern institutions. This was achieved partly through the influence of the more enlightened Moroccans and partly through the active international relations sponsored by His Majesty King Sidi Mohammed V. One of the most significant trends to be observed in 1956 was the general urge towards constructive criticism filtering through, via the Moroccan Government, to public opinion, which is eager for enlightenment in all fields with the help of freedom of thought.

53. This freedom, which is the condition of all other freedoms, is an integral part of the history of the Maghrib people and its Moslem tradition.

54. There is no technical term to convey, as is possible in some secular countries, the concept of law isolated from its religious substratum: the Sharīa and Fiqh, which complement each other, are regarded as constituting Islamic law, which embraces all juridical thought.

55. The "unperceived notions" which for the Moroccan jurist are the hidden framework of modern law, offer a means - the Qiyās or analogical deduction - of evolving a legal system geared to the realities of present-day life. There would not appear to be any real inconsistency between Western and Eastern juridical techniques, since the Moroccan jurist has understood the underlying reasons for the evolution of new juridical concepts.

56. Morocco, a modern State under Moslem rule, accords to all inhabitants of the Kingdom the fundamental freedoms set forth in the Universal Declaration of Human Rights.

57. This political policy is characteristic of the spirit of tolerance traditionally upheld by Moslem law and is set forth in the current legislation of the new Moroccan State. This legislation has been applied in the civil, commercial, administrative or penal fields without discrimination on grounds of race or religion to all inhabitants of the territory. Juridical allowance made for the ethnic diversity of the country has, on the other hand, enabled the full exercise of the rights of the person and the family to be asserted and recognized in the case of each national in the form of personal status, which fully safeguards these rights. Internal public order thus fits in with international public order on the highest moral plane.

58. His Majesty Sidi Mohammed V and his Government are thus continuing an age-old tradition. When Sultan Mohammed II brought to an end the Byzantine Empire, he allowed the Orthodox Christians and the Jewish colony to retain their practices and customs. Several centuries earlier, peaceful coexistence between Moslems and non-Moslems had been established and rights and freedoms had been granted.

59. A modern State such as Morocco, with a population of Moslems and various ethnic groups, has to cater for political freedoms by a unification of the juridical system and general legislation; this is in fact the aim of the Moroccan Government; traditional Moroccan liberalism is reflected in the application and organization of equal civil laws respecting the personal status of a heterogenous population.

60. Norway reports that the Constitution of 1814 contains no general provisions stating that citizens possess inviolable human rights such as right to freedom, equality, life and personal security. It was considered sufficient to include provisions covering areas where practical considerations rendered it particularly desirable to protect the individual against incursion by the State. Reference is made to the Constitutional provisions which place direct restraint on the legislative authority (paragraphs 96 and 97); and to those directed against arbitrary administrative action (paragraph 99). The latter type of provision can be regarded as the individual application of the principle prevailing in Norway that encroachment upon the legal sphere of the citizen cannot take place except as warranted under law. The courts are empowered to test the constitutionality of

statutes and to determine whether administrative measures are without legal warrant or in violation of the law and, in such event, to annul the statute or invalidate the administrative act concerned. This provision is not in the Constitution but must be regarded as a basic principle established through constitutional common law.

61. Panama states that the constitutional rules protecting the rights of society and of the individual are strictly complied with in Panama.

62. Sweden reports its accession, on 2 March 1951, to the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950, pointing out that a number of articles in that Convention are in keeping with the articles of the Declaration.

63. The United Kingdom states that in Northern Ireland the legal system and practices are broadly similar to those in England and Wales and, except as otherwise stated, reference to the position under English law can be taken as applying in Northern Ireland also. Scots law and the Scottish legal system have different origins and have developed differently and in many instances separate reference to them was necessary. Where no separate reference is made it can be assumed that broadly speaking the practices and arrangements described are also to be found in Scotland.

64. With regard to the non-self-governing territories the United Kingdom states that the limitation on the length of the report prohibits any detailed analysis, right by right and territory by territory. The Government reports that a substantial body of the rights in the Declaration is enjoyed on the same basis as in the United Kingdom itself. The right to life, liberty and security of person, to recognition and equality before the law, to a remedy against violations of the rights granted to a person by the law or constitution of his country and to a fair and public hearing before an impartial judiciary of any charge against him, to the presumption that he is innocent until he is proved guilty and to be safeguarded against retrospective penal offences or penalties, to freedom from arbitrary interference with his privacy, family, home or correspondence and to a remedy against such interference or attacks on his good name, to liberty of movement and to a nationality, to marry and found a family, to own property, to freedom of thought, conscience, religion, opinion, expression, assembly and association: these rights, as well as the granting of asylum, are all part of

the British tradition. Most of the territories here concerned have come under British administration since the time when the rights were secured in the United Kingdom itself and the development and establishment of them in the overseas territories has been part of the normal and natural functions of the administrations, and also part of the heritage which they have sought to hand over as and when territories have become independent. (Some further details relating to certain rights are given under articles 4, 5, 13, 18 and 20 below.)

65. With regard to the rights set out in the latter part of the Declaration, the Government refers to reports transmitted under Articles 73 (e) and 88 of the Charter, to reports on economic, social and educational conditions prepared by the Committee on Information from Non-Self-Governing Territories, and to reports to and by the specialized agencies. It states that many of the territories are still relatively under-developed and the social conditions in which some of the rights may be fully enjoyed are not yet secured. They depend upon the continuance of the vigorous expansion of the economies of the territories concerned which is one of the prime preoccupations of their governments and of the United Kingdom Government. In some respects, too, the full enjoyment of the rights as they are understood in the Western world and to Western philosophy depend upon the education of opinion which is grounded in native law and custom, a process which to secure its own objectives must be pursued with care and deliberation if the co-operation of the people is to be maintained and what is valuable in their own cultures preserved.

2. General Statements relating to the Period 1954-1956

(a) Developments

66. Austria refers to the State Treaty for the establishment of an independent and democratic Austria of 15 May 1955 which contains fundamental rules concerning human rights, the rights of minorities and political rights (B.G.Bl. No. 152, articles 6, 7, 8 and 12); and to the Military Service Act which contains rules on human rights and fundamental freedoms or rules affecting such fundamental freedoms (B.G.Bl. No. 181/1955, articles 25 et seq. and 34 et seq.). (Further details of these Acts and other developments are mentioned under the appropriate article of the Declaration below.)

67. Chile reports that there have been no judicial decisions relating to problems of human rights and involving the discussion of any fundamental principle. There are few developments to report (see paragraph 4 above: see also article 27 below).

68. China draws attention to the significance of the transfer, on 1 June 1956, of the Bureau of Investigation from the Ministry of the Interior to the Ministry of Justice. The Government states that, as the functions of the Bureau, such as conducting investigation, ensuring internal security and compiling statistics, are closely related to those of procurators' offices, and its investigators are often called upon to perform the duties of judicial police, the transfer enables the Bureau to co-ordinate its work with those related agencies and improve its efficiency.

69. Czechoslovakia reports amendments of 19 December 1956 (Act No. 63/1956. Collection) to the Penal Code and an Act of 19 December 1956 (Act No. 64/1956. Collection) on the Rules of Penal Procedure. The Government states that the amendments to the penal code enable the courts to extend and intensify the educational purpose of penal jurisdiction, in particular, by extending the range of possibilities for imposing a conditional sentence and by abolishing the original provisions which in the case of certain penal offences excluded the possibility of conditional sentence. The new Act provides for the possibility of waiving punishment not only with regard to juveniles, as provided under the original legislation, but also in respect of adult offenders. It extends the possibility of imposing corrective measures and abrogates the provisions excluding the imposition of lesser penalties than those provided by the Penal

Code with respect to certain penal offences and provides that confiscation of property and pecuniary fines shall only be facultative, and abrogates the penalty of life imprisonment (details are given mainly under article 5 but also under articles 3, 4, 10 and 11 below. Other developments are mentioned under the appropriate articles below).

70. Nepal reports the promulgation in 1955 of a Civil Liberties Act replacing the Personal Freedom Act of 1949, stating that an attempt has been made to incorporate in this Act the main provisions of the Universal Declaration. Its chief features are: equality before law and equal protection of law within the territory of Nepal, prohibition of discrimination on grounds of religion, caste, sex, etc., freedom of speech and expression, right to assemble peaceably and without arms, right to move freely throughout Nepal, right to acquire, hold and dispose of property, right to practice any profession or to carry on any occupation, trade or business, importance of taxes only with the authority of law, right to private protection of right to liberty, prohibition of forced labour, prohibition of employment of children in factories, protection in respect of the nation and right to sue the Government. (Further details are given under the appropriate articles of the Declaration below.)

71. The Government also reports the promulgation in 1956 of the Supreme Court Act which vests extraordinary jurisdiction in the Supreme Court for the enforcement of any rights conferred on citizens and others by law (details are given under articles 8 and 10 below).

72. Pakistan reports the adoption during the period under review of a new Constitution and states that its most striking feature is that it conforms to the provisions of the Universal Declaration. (Some further details are given under article 21; the provisions of the Constitution are described under the pertinent articles of the Declaration below.)

(b) Progress

73. Cambodia describes a number of new laws, in a section of its report entitled "Progress effected by new laws in various fields" and states that all these measures show that since achieving independence "Cambodia has tried to direct legislation towards the better protection of human rights" (for details see under articles 8, 9, 11, 15, 19, 22 and 26 below).

74. Czechoslovakia states that the amendments of 19 December 1956 to the Penal Code (Act No. 63/1956. Collection) are "an expression of profound humanism and serve to strengthen socialist legality which is an essential prerequisite to the further advancement and progress of our country".

75. Hungary describes as "important milestones" in the development of human rights four legislative decrees of 1955 and 1956 enacting into the law of the Hungarian People's Republic international conventions which protect fundamental human rights; among these, the Protocol of 17 June 1925 for the Prohibition of the use in war of asphyxiating poisonous or other gases and of bacteriological methods of warfare (Law-Decree No. 1955/20). (For the other conventions see under articles 1, 2, 4, 7 and 21).

76. Luxembourg reports that it has concluded various international agreements devoted to progress in different human rights fields (see under articles 3, 13, 14, 22 and 23 below).

77. Pakistan describes the Constitution of 1956 "as a constructive measure towards the safeguarding of human liberty and enjoyment of human rights without distinction".

(c) Difficulties

78. Cambodia reports that as a result of the war in Indo-China and the achievement of independence a certain number of political rights could not be exercised under normal conditions. The easing of tension, both internally and externally which followed the Geneva agreements (end of 1954) enabled the country to return to the normal exercise of the rights laid down in the Constitution. (Further details are given under article 21 below.)

79. Hungary reports that events in October-November 1956 impeded developments in human rights since immediate measures which could not be postponed were required. The Government had to restrain elements which were endangering the resumption of productive work. Restrictions were imposed on the holding of demonstrations and rallies. The activities of those endangering the order and peace of the country were curtailed. The Government emphasizes that the restrictive measures taken in the emergency situation had a merely provisional character. Elements most dangerous for society were released from jail. Criminals obtained weapons, endangering the life and property of nationals. Robbery and murder were customary.

Those who committed acts dangerous for social order and for the natural and inalienable rights of nationals had to be punished.

80. The Government reports that the political and economic situation was consolidated within an extremely short time after October-November 1956. Energetic measures were taken to increase the cultural level of the working people and to extend their social and cultural rights. The Government states that this leads to the conclusion that the development of human rights begun in 1945 and resulting in substantial achievements since that date, will in the future take a vigorous course.

81. Morocco states that the period 1954-6 corresponds exactly to Morocco's struggle for independence and that therefore any idea of respect for human rights and fundamental freedoms could not attract attention. However, since independence was achieved, the Government has undertaken with determination constructive work in all fields and especially in that of human rights: reorganization of justice, measures against unemployment, democratic government by the preparation of elections and measures to generalize trade union rights, and recent efforts aimed at raising the standard of living of the peasants.

82. The following questions relating to articles 1, 2 and 7 of the Declaration have been dealt with in the reports by Governments:

1. The Principles of Freedom and Equality in General^{1/}
2. Equality before the Law^{2/}
3. Equal protection of the Law^{2/}
4. Equal protection against discrimination and against any incitement to such discrimination^{3/}

^{1/} Some Governments (China, France, Morocco and Philippines) reported information of a general character under articles 1 and 2 of the Declaration. Since it was specifically related to those articles it has been summarized under this subject-heading and not included among the statements summarized in the General Section above.

^{2/} See also Article 10, Equality before the Courts.

^{3/} Information relating to the Convention on the Prevention and Punishment of the Crime of Genocide has been included under this heading.

5. Distinctions based on particular characteristics

- (a) race
- (b) colour
- (c) sex
- (d) language
- (e) religion
- (f) political or other opinion
- (g) national origin
- (h) social origin
- (i) property
- (j) birth
- (k) caste
- (l) place of birth
- (m) matrimonial status
- (n) status of alien

6. Special measures for deprived or backward classes or tribes

7. Special measures for reparation or redress of discrimination in the past

8. Distinction based on the status of the country or territory to which a person belongs

Some Governments also reported on questions relating to rights of minorities. These have been summarized under the heading:

9. Protection of Minorities

Developments during 1954-6

83. Ten Governments reported developments during the period under review. Austria (see paragraphs 93-98, and 148); Brazil (see paragraph 123); Ceylon (see paragraph 145); Denmark (see paragraphs 125, 171-173); France (see paragraphs 158 and 169); Hungary (see paragraph 129); Israel (see paragraphs 107 and 137); Morocco (see paragraph 87); Nepal (see paragraphs 111 and 112); Norway (see paragraphs 132, 138, 139); Pakistan (see paragraphs 114-116, 121, 146).

1. The Principles of Freedom and Equality in General

84. Cambodia refers to the Constitution which provides (article 3) that freedom shall be the option of doing whatever does not harm the rights of another, and that conditions for the exercise of freedom shall be defined by law. No one may be compelled to do that which the law does not require.

85. China reports that articles 1, 2, 3, 5, and 7 of the Constitution lay down the principle that all persons are born free and equal and that no one should be subject to any discrimination. The Constitution proclaims that the Republic of China is a democratic republic of the people to be governed by the people and for the people (article 1); that its sovereignty resides in the whole body of citizens (article 2); that persons possessing Chinese nationality are citizens of the Republic of China (article 3); that all component racial groups enjoy equal rights (article 5); and that all citizens, irrespective of sex, religion, race, class or party affiliation are equal before the law (article 7).

86. France refers to the Preamble and to articles 80 and 81 of the Constitution of 27 October 1946.^{1/} The Preamble proclaims that every human being without distinction of race, religion or belief possesses inalienable and sacred rights. It solemnly reaffirms the rights and freedoms of man and of the citizen consecrated by the Declaration of Rights of 1789, and the fundamental principles recognized by the laws of the Republic. It further proclaims "as most vital in our time" certain political, economic and social principles.

87. Morocco reports, with reference to the principle of individual liberty, on the provisions governing commitment of lunatics to institutions. This is done under a dahir of 20 March 1956 which provides all the necessary guarantees against internment on pretence of lunacy.

88. The Government states that, in principle, there is no law or regulation which would allow any distinction on grounds of race, colour, sex, language, religion or social origin with respect to the enjoyment of rights and freedoms.^{2/}

89. Pakistan draws attention to the fact that its new constitution provides for the enjoyment of human rights without distinction of any kind such as race, colour, sex, language, religion, property, birth or other status.

^{1/} See also under the heading "Distinction based on the status of the country or territory to which a person belongs", (paragraphs 150 and 151 below).

^{2/} See also under: Equality before the Law (paras. 108-110).

90. The Philippines reports that democracy as a way of life is enshrined in the Constitution (Guido v. Rural Progress Administration, 47.O.G.1848). The belief that every human being has an essential dignity and integrity which must be respected and safeguarded prompted the framers of the Constitution to include therein a Bill of Rights.

91. The Government states also that the provision of the Civil Code, which provides that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith (article 19) expresses the principle that individuals should act towards one another in a spirit of brotherhood.

92. Sweden states that Swedish law is in accordance with the provisions of article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This corresponds to the non-discrimination clause of article 2 of the Universal Declaration.

2. Equality before the law

93. Austria draws attention to articles 6 and 7 of the State Treaty for the re-establishment of an independent and democratic Austria of 15 May 1955 (BGBl No. 152), stating that the Treaty became part of municipal law in accordance with article 50 of the Federal Constitution. Article 6 reaffirms the principle of the equality of all citizens before the law. It provides that Austria shall: take all measures necessary to secure to all persons under Austrian jurisdiction, without distinction as to race, sex, language, or religion the enjoyment of human rights and fundamental freedoms, including freedom of expression, press and publication, religious worship, political opinion and public meeting; and undertake that the laws in force in Austria shall not, either in their content or their application, discriminate or entail any discrimination between persons of Austrian nationality on the ground of their race, sex, language or religion, whether in reference to their person, property, professional or financial interests, status, political, other civil rights or any other matter. Article 7 provides that Austrian citizens belonging to Slovene and Croat minorities in Corinthia, Burgenland and Styria enjoy the same rights as all other Austrian citizens.

94. The Government points out that under article 12 of the Treaty former members of national socialist organizations were placed on an unequal footing vis-à-vis other citizens, so far as liabilities to military service were concerned.

95. The Government draws attention also to the Military Service Act of 1955 (BGBl No. 181/1955) under which all male citizens between the ages of 18 and 50 are liable to military service for a certain period. The Act contains provisions governing the exemption of "conscientious objectors" from service involving the use of weapons (article 25 et seq) which are based on the principle of freedom of belief and conscience. Conscientious objectors are thus placed on an unequal footing vis-à-vis other persons liable to military service. There is also inequality between a member of the armed forces who is in a special status of subordination and other citizens.

96. The Government reports a Federal Act concerning the treatment under administrative law of South Tyroleans and Kanaltaler employed in the public service (BGBl No. 97/1955). Under this Act certain groups of persons who are not Italian-speaking are granted equal status for the purpose of administrative law, with Austrian citizens employed in the public service.

97. The Government reports also that the Federal Constitutional and certain Federal Acts of 1955 (BGBl No. 261/1955; and Nos. 262, 283 and 285) abolished special courts and State measures which formerly affected members of the national socialist party and persons belonging to certain Nazi organizations, thereby restoring such persons to a position of equality with other citizens.

98. The Government refers to a number of decisions of the Constitutional Court in 1954 and 1955. The Court held: (a) that political rights are rights affording to those concerned an influence on the formation of public policy (Decision of 13 October 1954, B 93/1954); (b) that a citizen's right to equality before the law might not be abridged, even if there was shown to be an objective reason for his receiving special treatment (Decision of 12 October 1954, B 129/1954); (c) that an infringement of the right of equality could be deemed to have occurred only if in a particular case an authority gave a ruling different from that which it gave in other cases of the same kind and if this ruling was based on considerations which are irrelevant i.e. based on personal attributes which, under Article 7 of the Federal Constitution, may not be taken into consideration (Decision of

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12 October 1955, B 138/1955); and (d) that the principle of equality was also binding on the ordinary legislator (Decision of 15 October 1955, B 136/1955). In a decision of 16 December 1955 (B 81/1955) the Court emphasized that the principle of equality was not infringed if differential treatment of citizens was motivated by material considerations.

99. China cites certain constitutional provisions (see para. 85 above) and also refers to provisions of the Civil and Criminal Codes which, the Government states, fully reflect the principles set forth in articles 6 and 7 of the Universal Declaration.^{1/}

100. Denmark reports that article 70 of the Constitution of 5 June 1953, adds "descent" to "creed" as a ground on which nobody may be deprived of access to complete enjoyment of his civic or political rights or evade compliance with common civic duties.

101. Finland reports that the principle expressed in article 5 of the Constitution that Finnish citizens shall be equal before the law means that the public authorities must apply the law according to identical principles without regard to the person and that exceptional laws may not be promulgated which would give certain persons or groups of persons a more favourable or unfavourable position with regard to rights than that enjoyed by citizens in general. Various special provisions of Finnish legislation emphasize this principle of equality.

102. France states that equality before the law is one of the basic principles of French public law. The Declaration of the Rights of Man and of the Citizen, of 1789, proclaims that the law should be the same for all, whether it protects or punishes, and the same principle is reiterated in the preamble and in articles 80, 81 and 82 of the Constitution of 27 October 1946.

103. There are manifold applications of this principle in all branches of law: the Civil Code states that "every Frenchman shall enjoy civil rights" (article 8). In penal law, the principle of equality before the law can only be affected by the application of parliamentary and diplomatic immunity whose justification is beyond dispute. In the system of penalties involving deprivation of liberty no distinction is made on grounds of race, language, religion, political or religious opinion, national or social origin, financial circumstances or birth. Nor is any

^{1/} Further details are given under article 6 below.

distinction made as to the political, jurisdictional or international status of the country or Territory to which a person belongs.

104. The Government further states that administrative law is governed by respect for the principle of equality. Any measure by the administration contrary to that principle may be annulled by the Conseil d'État on a complaint of ultra vires. In this respect, there has been ample precedent in the administrative and civil courts.

105. The Government mentions two decisions of the Court of Cassation concerning the principle of personality of penalties whereby the Court: (a) annulled a decision requiring several defendants, found guilty of the same offence, to pay a joint fine (Crim. 9 Nov. 1954 - B. 54, p. 559), and (b) decided that except in special cases provided by law a commercial firm could not be found criminally responsible for an offence (Crim. 3 January 1955 - B. 55, p. 493).^{1/}

106. Hungary refers to article 49 of the Constitution which provides that nationals of the People's Republic are equal before the law and enjoy equal rights, and that any discrimination of nationals on grounds of sex, religion or nationality is severely punished by law.^{2/}

107. Israel reports a decision of the Supreme Court sitting as High Court of Justice in which it held, with respect to a Druze of military age, who claimed that because he belonged to a minority group, he might not be called up for military service, that there was no foundation whatever for this claim. The law did not bind only a portion of the people, but all the people in the State without distinction (Decision of 20 April 1956. Hassuna v. Prime Minister)

108. Morocco states that the Moroccan judicial system covers various categories of courts whose jurisdiction is based on the nationality or religion of the justiciable person: courts of ordinary law for Moroccans and, in matters concerning personal and successional status, *chrâa* courts applying Islamic law to Moslem Moroccans and rabbinical courts applying the Mosaic law to Moroccan Jews; and lastly, modern courts for aliens. There are thus a number of ways by which a person may avail himself of the rights and freedoms proclaimed by law.

^{1/} See also under the heading: Distinction based on the status of the country or territory to which a person belongs.

^{2/} See also under the headings: "Equal Protection of the Law" and "Special measures for reparation or redress of discrimination in the past", below.

109. The Government also indicates that nationals and aliens are equal before the law and no racial discrimination is permissible.

110. Moroccan legislation admits of certain jurisdictional privileges; in the case of crimes or offences committed by members of the Government, governors, magistrates, pashas, caïds and their khalifas, the matter shall be referred to the High Court and not to the court that would normally be competent.

111. In Nepal the Civil Liberties Act of 1955 provides that, subject to the existing law, the Government shall not deny to any citizen equality before the law or equal protection of the law in the territory of Nepal, and the same punishment shall be awarded for the same offence, in accordance with the Penal Code, irrespective of religion, caste and creed of the person involved (Sec. 3). The Government shall make appointments on grounds of merit only and shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or any of them (Sec. 4). However, it shall be lawful for the Government to make special provision for women, children and persons belonging to the backward classes of citizens (Sec. 5 (a)).

112. In principle, aliens are entitled to all the rights conferred in the Act. The Government may under certain conditions exclude a particular foreigner from the benefit of some or any of those rights, or make rules, with respect to any class or classes of foreigners restricting or limiting the rights conferred by the Act.

113. Norway states that the principle of equality before the law is expounded under paragraph 95 of the Constitution, which provides that no dispensations, protections, postponement of payments or redresses may be granted once the new General Code has entered into effect. This prohibition against making individual exceptions to the law, should not be taken literally to imply a restraint upon legislation. In practice, the provision does not prohibit dispensations unconditionally, but rather prevents the administration from granting dispensations of its own accord without authorization under law.

114. Pakistan states that under article 5 of the Constitution all citizens are equal before the law and entitled to equal protection of the law.

115. The Government points out that Pakistan is a country where, besides Muslims, many races, religions, languages and cultures exist. The Constitution places all non-Muslims on a basis of equality with Muslims in all respects.

116. Article 14 of the Constitution provides that there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex or place of/...

birth in respect of access to places of public entertainment, not intended for religious purposes only. Nothing in this article shall prevent the making of any special provision for women.

117. The Philippines reports that every person is guaranteed equal protection of the laws under the Bill of Rights to the Constitution (Art. III, Sec. 1, cl. 1). Two decisions of the Supreme Court are cited, in which the Court: (1) emphasized that this guarantee was uniform in its application to all persons within the territorial jurisdiction irrespective of race, colour or nationality (Smith Bell v. Natividad); and (2) held that there was no difference between a law which denied equal protection and a law which permits of such denial (People v. Vera, 65 Phil. 56, 126).

118. The Government states further that it is a well settled rule in Philippine constitutional law that legislation which affects equally all persons of the same class and not those of another, is not a class legislation and does not infringe upon the guaranty of equal protection of laws; if the division into classes is not arbitrary but based on differences which are apparent and reasonable (Co Chiong v. Cuaderno, 46 O.G. 4883; People v. Cayat, 68 Phil. 12; Manila Electric Co. v. Public Utilities Employees Assn. 44 O.G. 1760; Laurel v. Misa, 42 O.G. 2847).

119. The United Kingdom reports that as with many other fundamental rights, equality before the law results from any positive provision but from the absence of any legal justification for discrimination. At the present time there is no discrimination in such matters as legal procedure, access to the courts, availability of legal remedies, right to representation, etc., on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This however was not always so. At one time literate men might plead "benefit of clergy" as a bar to capital punishment for a first conviction of felony. This privilege had its origin in the claim of the ecclesiastical courts to have jurisdiction over all clerics to the exclusion of lay courts. It became a method of abating the inhumanity of the English criminal law in favour of any man who was qualified for ordination by being able to read, even though he was not in fact a priest. This unreasonable and anomalous survival of an earlier age was abolished in 1827 (7 and 8 Geo. 4 c. 28, s.7). For centuries, peers and their wives, if tried for felony, had to be tried in the House of Lords, but this was abolished in 1948 (Criminal Justice Act, 1948, s.30).

3. Equal protection of the law ^{1/}

120. Hungary states that the unimpaired exercise of human rights is assured, inter alia, by the penal provisions of Law No. 1946:X according to which, a civil servant who, in exercising his official duties, illegally violates somebody's natural and inalienable rights, is guilty of a felony and punishable by imprisonment for up to five years.

121. Pakistan states that non-Muslims as well as Muslims are guaranteed the right to profess, practise and propagate their religion, to establish educational and religious institutions of their own choice, to hold and acquire property, to become citizens of State, to enter into any profession or occupation on equal terms with the Muslims. The Constitution contains specific provisions to ensure that there shall be no discrimination against them. ^{2/}

4. Equal protection against discrimination and against any incitement to such discrimination

122. Brazil refers to the Act of 5 January 1953, to define offences against the State and against the political and social order (Act No. 1802), which prescribes penalties in case of, inter alia, acts of violence arising out of racial, religious or class hatred, or bodily harm, insults, or coercion for reasons of religious doctrine or for political or social reasons.

123. The Government also refers to the Act of 1 October 1956 to define and punish the crime of genocide (Act No. 2889), and states that it was enacted to protect ethnical, racial and religious groups.

124. Chile reports Decree No. 316 of 5 June 1953 which makes provision for giving effect to the Convention on the Prevention and Punishment of the Crime of Genocide as a law of the Republic.

125. Denmark refers to Act No. 132, of 29 April 1955 (Lovtidende A 1955, No. XIX, of 2 May 1955), by which the necessary provisions were adopted to give effect to the obligations of Denmark under the Convention on the Prevention and Punishment of the Crime of Genocide.

^{1/} See also under the following headings:

2. Equality before the Law (Austria, France, Morocco, Nepal)

8. Distinction based on the status of the country or territory to which a person belongs (France)

^{2/} See also: Equality before the Law (paras. 115 and 116).

/...

126. France states that provocation or incitement to any form of discrimination that would violate the higher principles of the Constitution is severely dealt with. Under French law, article 32 of the Act of 29 July 1881, as amended by the legislative decree of 11 April 1939, prescribes penalties of up to one year's imprisonment and a fine of several million francs for allegations in writing calculated to incite hatred against groups of persons having a particular racial or religious background.

127. This text is equally applicable to the Overseas Territories and to Togoland and the Cameroons.

128. Hungary refers to Law No. 1946:VII on the protection of the democratic order, which provides (article 2) that a person who incites against the equal rights of nationals, or to hatred against nationality, race, or religion, or whose behaviour is, in any other way, likely to provoke such hatred, is guilty of felony.

129. The Government also mentions Law-Decree No. 1955:16 on the promulgation of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

5. Distinctions based on particular characteristics

(a) Race^{1/}

130. France states that tolerance and absence of racial prejudice are among the most ancient and deep-rooted French traditions and that court action is sufficient to prevent racial discrimination.

131. Norway reports that owing to the composition of its population, it has few racial problems. The only group which language and origins render distinguishable from the remainder of the populace is the Lapps, who possess rights identical with the rest of the population, politically as well as in other respects, except that generally they cannot assume public office unless they can speak Norwegian.

^{1/} See also under the following headings:

1. The Principles of Freedom and Equality in General (China; France; Sweden)
2. Equality before the Law (Austria; France; Morocco; Nepal; Pakistan; Philippines; United Kingdom)
4. Equal Protection against discrimination and against any incitement to such discrimination (Brazil; France)
6. Special Measures for deprived or backward classes or tribes (Pakistan)
7. Special Measures for reparation or redress of discrimination in the past (Austria).

132. The Government also reports that in the Alien Law of 27 July 1956 specific reference to "gypsies" which existed in the previous law of 22 April 1927 was omitted since it was found incorrect, on grounds of principle, to retain a special provision which could be construed as being directed against specific folk groups.

(b) Colour^{1/}

(c) Sex^{2/}

133. Denmark indicates that under the Constitution of 1915, and the Succession to the Throne Act of 1853, only men were entitled to succeed to the throne. The new Constitution of 1953 provides (article 2) that the royal power shall be inherited by men and women in accordance with the provisions of the Succession to the Throne Act of 27 March 1953. According to the latter, a son of the King shall take precedence over a daughter, and a brother shall take precedence over a sister (articles 2 and 3).

134. Finland states that although the Constitution contains no provisions concerning equality between the sexes, the principle is recognized, almost without exception, by Finnish legislation. Women have the right to vote in parliamentary as well as in communal and ecclesiastical matters (Organic Act of Parliament No. 839/44, art. 6; Act No. 642/48 on communal administration, art. 15; Act of 25 June 1918, No. 59/18 on the Church, art. 309). Under Act No. 112/26 concerning the eligibility of women for public office, the appointment of women to all public posts and offices has been made possible, except for certain limitations imposed by the aforesaid Act and supplementary decree, in view of the nature of the offices in question. In the matter of marriage law, the legal incapacity of the married woman, with the corollary that her husband must be her legal representative, has been abolished (Act concerning the entry into force of the Marriage Act, No. 235/29, art. 3), and similarly equality between the sexes has been achieved in the matter of succession (Code of Succession, Chap. 2, art. 1).

1/ See under the following headings:

1. The Principles of Freedom and Equality in General (Sweden)
2. Equality before the Law (Morocco; Philippines; United Kingdom).

2/ See also under the following headings:

1. The Principles of Freedom and Equality in General (China; Sweden)
2. Equality before the Law (Austria; Morocco; Nepal; Pakistan; United Kingdom).

135. Hungary states that Law No. 1948:LVIII assured equal legal status for women in respect of their employment in the public service as well as in every other walk of life.

136. Article 50 of the Constitution of 1949 provides that women and men enjoy equal rights, and that equal rights of women are implemented by the safeguarding of their working conditions on a par with those of men, maternity leave with pay, by increased legal protection of mother and child, and by a system of maternity and child welfare institutions.

137. Israel reports that certain provisions of the Civil Service regulations have been revoked by the Civil Service Commissioner on an administrative complaint and following an opinion of the Attorney-General dated 25 April 1956. It was found that these provisions, providing for a lower additional salary for married female civil servants than for males in the same circumstances, were inconsistent with the provisions of Sect. 1 of the Equality of Rights Women Law, 5711-1951. The general rule is that anything paid to a man in respect of his wife, must be paid to a woman in respect of her husband; and what is not paid to a man in respect of his wife, need not be paid to a woman in respect of her husband.

138. Norway reports that equality of women before the law was established in all major respects by 1954. During 1954-56 certain remaining provisions of a more special nature were deleted. The Government refers to the statute of 14 June 1956 (No. 4) rescinding the law of 24 June 1938 (No. 5) concerning conditions for the appointment of women to the public service. The last remaining provisions under Norwegian law setting forth special conditions for the entry of women into the Civil Service were removed, with the sole exception of those governing order of succession to the throne (paragraph 6 of the Constitution). The statute of 24 June 1938 had made it a condition, among others, that women should not be appointed as priests in the State Church in instances where the congregations concerned had voiced opposition on grounds of principle.

139. The statute of 21 December 1956 (No. 1) governing retirement age for civil servants sets the retirement age at seventy for both men and women. Previously, the retirement age for women was sixty-five.

(e) Religion^{1/}

140. Finland refers to article 9 of the Constitution which provides that the fact of belonging to any particular religious community or of not belonging to any such community shall have no influence upon the rights and duties of Finnish citizens. With respect to public posts and offices restrictions defined by law, however, remain in force until it be otherwise enacted. The Government states that under the Act of 10 June 1921 (Act No. 173/21) concerning the right of Finnish citizens to be employed in the public service without regard to their religion, exceptions to that right are made, only in the case of posts in the Evangelical Lutheran Church and religious instructors' posts, for which persons not belonging to that Church are not eligible.

141. Morocco reports that all Moroccans, without distinction on grounds of religion have access to public service. Jews are admitted to the School of Administration and the royal armed forces. They may also become Ministers in the Government.

(f) Political or other opinion^{2/}

(g) National origin^{3/}

142. Morocco reports that in the bar systems attached to modern courts. The bâtonniers and Council members of the Order of Legal Counsel may be either Moroccan or French, without distinction.

1/ See also under the following headings:

1. The Principles of Freedom and Equality in General (China; France; Pakistan; Sweden)
2. Equality before the Law (Austria; Denmark; France; Morocco; Nepal; United Kingdom)
4. Equal protection against discrimination and against any incitement to such discrimination (Brazil; France)
6. Special measures for deprived or backward classes or tribes (Pakistan).

2/ See under the following headings:

1. The Principles of Freedom and Equality in General (China; Sweden)
2. Equality before the Law (France; United Kingdom)
4. Equal protection against discrimination and against any incitement to such discrimination (Brazil)
7. Special measures for reparation or redress of discrimination in the past (Austria; Hungary).

3/ See also under the following headings:

1. The Principles of Freedom and Equality in General (Sweden)
2. Equality before the Law (France; Philippines; United Kingdom).

(h) Social origin^{1/}

143. Finland reports that under article 15 of the Constitution no discrimination based on titles of nobility or other hereditary dignity is possible.

144. Norway draws attention to provisions in the Constitution designed to counteract the emergence of an hereditary nobility or affluent class: no personal or mixed hereditary privileges (paragraph 23), and no earldoms, baronies, entailments and fideicommissa (paragraph 108) may be granted to anyone. The Government reports also that paragraph 107 of the Constitution stipulating that the Odal Right - or that empowering the family, under certain conditions, to repossess landed properties which have come under outside ownership - must not be revoked, has a similar objective.

(i) Property^{2/}

(j) Birth^{3/}

145. Ceylon reports two decisions of the Privy Council in 1956:

(a) In one case, it was established that the applicant, a married woman and mother of an illegitimate child for whom she was applying for maintenance, was living apart from her husband for five or seven years, and that she had had sexual intercourse with the defendant. It was held, that the facts warranted a finding of "no access" within the meaning of Section 112 of the Evidence Ordinance, and there was therefore no presumption of legitimacy. (Kalikutty Kanapathipillai vs. Velupillai Parpathy (reported in 57 New Law Reports, p. 553).)

(b) In the case of an action for partition in which the dispute related to the heirs of a man called Peduru who died in 1945, after having had two lawful children from a first marriage and three children from a subsequent

1/ See also under the following headings:

1. The Principles of Freedom and Equality in General (China; Morocco; Sweden)
2. Equality before the Law (France; United Kingdom)
4. Equal Protection against discrimination and against any incitement to such discrimination (Brazil)
7. Special measures for reparation or redress of discrimination in the past (Hungary).

2/ See under the following headings:

1. The Principles of Freedom and Equality in General (Sweden)
2. Equality before the Law (France; United Kingdom).

3/ See also under the following headings:

1. The Principles of Freedom and Equality in General (Sweden)
2. Equality before the Law (France; United Kingdom).

marriage. The District Judge held that the first child of the second marriage, although illegitimate, should benefit from the doctrine of Roman Dutch Law relating to "putative marriages", but that subsequent children could not invoke the same doctrine as they were born after their mother had realized that Peduru was not her lawful husband. It was held on appeal that the doctrine of "putative marriages" did not apply and that the plaintiffs (the first wife and her two children) were the sole intestate heirs of the deceased. W. Herman Silva et al. vs. W. Kainerishamy et al. (reported in 57 New Law Reports, p. 567).

- (k) Caste^{1/}
- (l) Place of birth^{2/}
- (m) Matrimonial status^{3/}
- (n) Status of alien^{4/}

6. Special measures for depressed or backward classes or tribes^{5/}

146. Pakistan states that in the Constitution special provisions have been made for the promotion of the interests of Scheduled Castes and backward classes. The Government reports that it has been pointed out that a Commission should investigate the conditions of the Scheduled Castes and backward classes and submit a report to the President. Provision has also been made in the Constitution for the appointment of a Special Officer to look after their interests.

7. Special measures for reparation or redress for discrimination in the past

147. Austria reports an order (BGBl. No. 52/1954) which contains detailed regulations for giving effect to the Federal Act of 16 December 1953 (BGBl. No. 14/1954) concerning the validation of marriages of betrothed persons

- 1/ See under the following headings:
 - 2. Equality before the Law (Nepal)
 - 6. Special measures for depressed or backward classes or tribes (Pakistan).
- 2/ See under the heading:
 - 6. Special measures for depressed or backward classes or tribes (Pakistan).
- 3/ See under the heading:
 - 7. Special measures for reparation or redress of discrimination in the past (Hungary); and under subheading: (c) Sex (Israel).
- 4/ See under: Equality before the Law (Nepal).
- 5/ See also under the heading:
 - 2. Equality before the Law (Nepal).

who suffered persecution on racial or political grounds. Under article 1 of the Act, the court, upon application, may rule that a marriage has come into being despite the fact that the persons concerned were unable to contract marriage during the period 13 March 1938 to 31 March 1945.^{1/}

148. Hungary reports among enactments during the period 1945-47:

Law No. 1946: XXV. on the condemnation of the persecution of Jews and the relief of its consequences;

Decree No. 9590/1945/X. 18/M.E. on the annulment of the disadvantages suffered on account of progressive attitude, and on the suppression of penal, disciplinary or administrative actions instituted owing to such attitude, and on the rehabilitation of persons sentenced on such grounds. This decree contains also provisions for re-employment and arrangements for superannuation of civil servants who were dismissed or disqualified for promotion by the former regime.

Law No. 1946: XI. abolished several matrimonial, property and inheritance rules, thus removing the legal remnants of a social order, which with its privileges, continued to violate the equal rights of nationals.

149. Under Law No. 1945: VII concerning the people's tribunals, severe punishments could be imposed on those who had violated fundamental human rights by committing war or antidemocratic crimes.

^{1/} Full text of the Act in the Yearbook on Human Rights for 1954, pp. 16-17.

8. Distinction based on the status of the country or territory to which a person belongs

150. France states that there is no discrimination between nationals of the overseas territories and metropolitan France. The Government draws attention to the provisions of the Preamble and to articles 80 and 81 of the Constitution. All nationals of the overseas territories are granted the status of citizens in the same capacity as French nationals of metropolitan France. The absolute equality of French citizens whatever their place of origin is established, and they are ensured the enjoyment of the rights and liberties guaranteed by the Constitution.

151. Citizens of the Trust Territories of Togoland and the Cameroons also enjoy the rights and freedoms granted to French citizens under article 23 of the Statute of the Autonomous Republic of Togoland and article 8 of the Statute of the Trust State of the Cameroons.

152. The cases that occasionally arise in this regard are dealt with by the courts in virtue of these general provisions. Two decisions are cited:

(a) the local court of first instance at Libreville (4 December 1947, Recueil Penant, October 1949, p. 271) ruled that a local order providing for penalties exclusively applicable to citizens having local status did not have binding force; (b) the Court of Cassation (Chambre criminelle, 24 November 1949 in Penant, May 1950) ruled that the prohibitions concerning alcoholic beverages (Decree of 3 November 1941) were territorial in scope and applied to all persons irrespective of their status.

153. The Government also points out that the absence of discrimination as regards public rights also applies in the case of civil rights.

154. As regards civil rights, customary law is not, at any rate in "Black" Africa, based on abstract guiding principles or the notion of equality but rests mainly on the strength of the family group and the authority of the head of the family.

155. This law is generally suited to small groups but is ill-suited to the detribalized masses in urban areas.

156. Thus French law, because of its general applicability, is the ordinary law.

157. The indigenous inhabitants are accordingly entitled, by way of tradition, to opt for the application of French law to any particular legal relationship,

that is, they may voluntarily choose to place themselves in any matter, including a family matter, under the jurisdiction of French civil law.

158. The Government mentions two ministerial circulars (No. 8,584 AP/4 of 18 October 1954 and No. 3,307 AP/4 of 25 April 1956). The first reviews and explains the principles that apply in opting for legislation by marriage and in renouncing polygamy. The other defines the nature and function of the various kinds of status. French law is in the nature of an auxiliary system that is invoked on the basis of a written request where customary law does not apply, is inadequate or uncertain or involves contradictions.

159. In addition to being able to opt for the application of French law to a particular legal transaction, act or relationship, the indigenous inhabitants may also opt for French civil status as it applies to the entire realm of ordinary law. Such an option is made by virtue of article 82 of the Constitution, which authorizes French citizens to renounce their personal status.

160. This option takes the form of a declaration made before the French civil court having jurisdiction over matters of personal status that is situated nearest to the declarant's place of residence. This declaration may be made by any person who is twenty-one years of age and is either unmarried or has only one spouse. All such declarations are officially certified.

161. By thus renouncing his personal status, a person voluntarily places himself for all time under the exclusive jurisdiction of the ordinary law.

162. This arrangement has been in force since the beginning of 1956.

163. As regards public rights, the citizens of the overseas territories, including the inhabitants of Trust Territories, are on the same footing as the citizens of metropolitan France.

164. The term "public rights" as used here means eligibility for any kind of public employment, the enjoyment of political rights including the right to vote and to hold elective office, and equality under the penal law as applied in all cases by the same courts.

165. The Government points out that since the adoption of the Decree of 30 April 1946 the inhabitants of overseas and Trust Territories are all subject to the jurisdiction of the same criminal courts applying the same law without distinction as to race or origin in the case of either defendants or plaintiffs.

Thus, in the course of a trial, both European and indigenous offenders may be seen sitting next to each other in the dock.

166. The presiding justices in the tribunals of the overseas territories have the same qualifications and are recruited under the same conditions as magistrates in France and are appointed by the Conseil Supérieur de la Magistrature, a constitutional body set up to safeguard the independence of the judiciary (articles 83 and 84 of the Constitution).

167. Provision is made in all criminal courts for the participation of ordinary citizens to assist the judge in reaching his verdict.

168. The Government points out that every precaution has thus been taken to prevent any discrimination in the application of the law.

169. The Government also refers to a decision of the Conseil d'Etat, dated 28 October 1955 (Penant, 1956, p. 68), which provides that leave arrangements for civil servants in overseas territories shall be the same for all members of a particular category irrespective of their place of origin or recruitment.

9. Protection of Minorities

170. Austria reports that the State Treaty (BGBl. No.152/1955) contains specific provisions on the rights of the Slovene and Croat minorities with respect to the use of minority languages in the schools and before the courts and administrative authorities and their cultural interests.^{1/}

171. Denmark reports on a declaration approved by Parliament on 19 April 1955 dealing with the general rights of persons belonging to the German minority in Southern Jutland (Statstidende of 11 June 1955).^{2/}

172. The declaration states that persons belonging to the German minority enjoy certain rights: personal liberty; equality before the law; freedom of creed and conscience; freedom of expression and of the press; freedom of assembly and association; free choice of occupation and place of work; inviolability of dwelling; right to form political parties; equal access to public employment according to merit, suitability and professional qualifications; right of

^{1/} See also Equality before the law, Austria, paragraphs 93 and 96.

^{2/} The full text will be published in the Yearbook on Human Rights for 1955.

franchise; right to invoke the protection of the courts in case of violation of rights; and the right to equal treatment.

173. In consequence of these principles certain provisions are laid down by the declaration. These include (summarized briefly): the right to use the language preferred; to establish schools; to participate in local government; to take part in the State broadcasting system; and to be allocated public funds without distinction. Further, reasonable regard shall be had to the daily press of the German minority when public notices are made; and their special interests in cultivating religious, cultural and professional relations with Germany is recognized.

174. Finland refers to article 14 of the Constitution which provides that the right of Finnish citizens to use their mother tongue, whether Finnish or Swedish, before the courts and the administrative authorities, and to obtain from them documents in such language, shall be guaranteed by law, so as to safeguard the right of the Finnish population and the rights of the Swedish population of the country in accordance with identical principles; and that the State shall provide for the intellectual and economic needs of the Finnish and Swedish populations in accordance with identical principles. The Government also states that the Act on national languages foreseen in the Constitution was promulgated on 1 June 1922 (Act No. 148/22).

ARTICLE 3

175. The following questions relating to article 3 have been reported on by Governments:^{1/}

1. The right to life
 - (a) Protection of the right in general
 - (b) Measures relating to abortion
 - (c) Provisions concerning the death penalty
2. The right to liberty
3. The right to security of person
4. The right to physical integrity
5. Penal sanctions against violation of the right to life, liberty and security of person

Developments during 1954-56

176. Eight Governments reported developments during the period under review: Austria (see paragraphs 193 and 194); Czechoslovakia (see paragraphs 184, 188); Denmark (see paragraph 197); France (see paragraph 218); Hungary (see paragraphs 185, 198); Israel (see paragraph 200); Nepal (see paragraph 204); and United Kingdom (see paragraphs 192, 207).

1. The right to life
 - (a) Protection of the right in general

177. Finland refers to article 6 of the Constitution of 17 July 1919 which deals with the protection by law of every Finnish citizen's right to life and personal liberty.

^{1/} Information submitted by Governments concerning arrest, detention and exile is dealt with under article 9.

178. France reports that the life of the individual is protected by the provisions of the Penal Code (articles 295 to 304; 309, last paragraph; and 312) which punish murder, premeditated murder, child murder, and grievous bodily harm or wounds resulting in death without intention to cause death. The law also deals, for purposes of prohibition, with jeopardy to life which may be brought about not only by voluntary acts but also by neglectful or imprudent acts (article 319).

179. In Nepal, the Civil Liberties Act of 1955 prohibits inter alia deprivation of life except in accordance with the procedure established by the general law (article 12).

180. Pakistan refers to the Constitution which prohibits deprivation of life or liberty save in accordance with law (article 5).

181. Panama states that the right to life and security of the person is protected by the authorities and the police in conformity with the Constitution and the law.

182. The Philippines refers to a provision in the Constitution which lays down that no person shall be deprived of life, liberty or property without due process of law (article III, sec. 1, cl. 1). The term "life" has been held to mean more than mere animal existence, and the inhibition against deprivation of life extends to all limbs and faculties by which life is enjoyed. It is stated that the view is becoming more widely held that life as protected by due process includes at the very least the right to a decent livelihood.

183. The United Kingdom reports that the right to life is secured by the fact that the intentional taking of life is a crime save in the following circumstances (stated briefly): (i) in the execution of the lawful sentence of death^{1/} of a competent court; (ii) in defence of persons or, in some cases, property, against unlawful violence, if the force used is reasonably necessary and is proportionate in the injury threatened; (iii) in the course of the advancement of public justice or the preservation of public order, such as, for example, action taken to effect arrest of a felon who resists arrest, or his recapture if he escapes, or to prevent a violent felony or to suppress a riot or rebellion. Apart from criminal proceedings, a killer is, in every case of unjustifiable homicide, also

^{1/} See under: Provisions concerning the death penalty, below.

liable to an action for damages, (Fatal Accidents Act, 1846; Law Reform (Miscellaneous Provisions) Act, 1934; in Scotland common law, and Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940, S.2).

(b) Measures relating to abortion

184. Czechoslovakia reports that under Act No. 63/1956, Collection, of 19 December 1956, amending the Penal Code, destruction of the human foetus is still considered a criminal offence, but certain amendments are introduced by which the act of abortion would not be punishable "if it has been effected with the concurrence of the pregnant woman in a hospital or other such institution under the conditions provided for by the Order of the Minister of Health; the concurrence of the pregnant woman may be replaced by the concurrence of her legal representative only in the event that her incapacity has been declared by a Court or in the event that she is incapable of expressing herself".

185. Finland reports that pregnancy may be interrupted without the pregnant woman's consent only when, by reason of a mental disorder, she is incapable of giving a valid consent to such a step: (Act No. 82/1950 relating to the interruption of pregnancy). Decisions taken by the Medical Board are not subject to appeal (article 2 and article 9, paragraph 2, of the Act).

186. France reports that abortion is punishable under French law (article 317 of the Penal Code).

187. Hungary refers to Resolution No. 1047/1956/VI.3/MT.h of the Cabinet Council on the regulation of questions connected with the interruption of pregnancy and the punishment of illegal abortions. According to this resolution the commissions established to consider such cases are obliged to give their consent if the woman insists upon the interruption of the pregnancy.

(c) Provisions concerning the death penalty

188. Czechoslovakia reports that section II of Act No. 63/1956 prescribes as an alternative penalty that of deprivation of liberty for a term of twenty-five years, in those cases where the Penal Code had provided for capital punishment as the only penalty. At the same time paragraph 30 of the Act provides for commutation of sentence to imprisonment for a term of ten years, where heretofore such sentence could only be commuted to deprivation of liberty of not less than fifteen years.

Reference is also made to section 337, paragraph 2, of Act No. 64/1956, Collection, on Rules of Penal Procedure enacted on 19 December 1956 which provides that the death sentence may not be carried out on a pregnant woman.

189. China describes the grounds on which the death penalty may be imposed for narcotics offences under an Act of 3 June 1957.

190. Finland states that Act No. 728/1949 concerning the abolition of capital punishment in time of peace provides that sentence of death may be passed only if the offence was committed when the country was declared to be in a state of war, or in a part of the country in which a state of war had been proclaimed.

191. In Norway, resort to the death penalty is prohibited except in time of war and under conditions comparable thereto, and then only for the most treasonous acts, etc.

192. The United Kingdom states that sentence of death is in fact imposed only after conviction of the crimes of treason (Treason Act, 1814) and murder, although such a sentence survives in the law in England as the punishment for violent piracy (Piracy Act, 1837) and arson of ships of war, dockyards, etc. (Dockyards, etc. Protection Act, 1772) and in Northern Ireland the death sentence may be imposed for certain offences involving the use of explosive substances for purposes dangerous to life and property (Civil Authorities (Special Powers) Act (Northern Ireland), 1922, S.6). Until recently every conviction of murder was followed by a death sentence but at present, except in Northern Ireland where the law remains unchanged, this can only be passed in defined cases of "capital murder" or for repeated murders (Homicide Act, 1957, ss. 5-7). Sentence of death may be commuted to life imprisonment by the exercise of the Crown's prerogative of mercy.

2. The right to liberty^{1/}

193. Austria reports that in consequence of the abolition of the people's courts (Act BGBl. No. 285/1955), the right to the protection of personal freedom was fully restored and, simultaneously, the State Fundamental Act (RGBl. No. 87/1867) is once again fully applicable to all citizens.

^{1/} See also article 8 under the heading: 2 (b) Judicial decisions declaring unlawful laws, regulations or acts which constitute violations of fundamental rights (with special reference to remedies against unlawful deprivation of liberty).

194. The Government refers also to a decision of the Constitutional Court of 13 October 1955 (B 153/55) in which it commented on the implications of "detention pending investigation" (Untersuchungshaft) and on the pertinent provisions of the Act respecting the protection of personal freedom (RG Bl. No. 87/1862).

195. Cambodia refers to the Constitution which defines liberty as the right to do anything which does not injure other people's rights and lays down that the conditions for the exercise of freedom shall be defined by law (article 3).

196. China refers to article 8 of the Constitution which guarantees "freedom of person", and states that the purpose of this article is to provide constitutional guarantee for personal liberty by authorizing the use of the writ of habeas corpus and affirming the right to trial by a court. Detailed procedure is laid down in the Act on the Right to Trial by a Court. An additional safeguard for personal liberty is found in article 9 of the Constitution which provides that no person except those in active military service shall be liable to military trial.

197. Denmark reports that article 71 of the Constitution of 5 June 1953 extends the protection of personal liberty not only to cases involving persons charged with a criminal offence, but also to other instances of deprivation of liberty. The provisions of this article have been implemented by a series of legislative acts, dated 11 June 1954. Act No. 173, amending the Code of Judicial Procedure, embodied new provisions regarding judicial control of administrative decisions relating to deprivation of liberty. Acts Nos. 175 to 182 also introduced consequential amendments to several laws which contain substantive provisions regarding deprivation of liberty on administrative order. Article 55 of the Constitution, concerning appointment by the Folketing (House of Parliament) of one or two persons who shall supervise the civil and military administration of the State, has been implemented by Act No. 203 of 11 June 1954. This Act provides for the appointment by the Folketing after each general election of a Commissioner who shall supervise on its behalf the civil and military administration. Article 6 of the Act entitled a person who is deprived of his personal liberty to address the Commissioner in a confidential letter.

198. Finland reports that provisions restricting individual freedom are to be found primarily in the sphere of legislation concerning social welfare and health. This includes: the Vagrancy Act (57/1936, article 5), the Drunkenness Act (60/136, articles 1 to 7), the Social Welfare Act (116/1956, article 40), the

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Act concerning the circumstances in which, in certain cases, provision must be made for the maintenance of children (614/1948, article 2) and the Public Health and Sanitation Act (614/1948, article 13). Under these provisions, the person concerned may be sent to a labour establishment or a welfare institution.

199. The Government also refers to the Act on dangerous recidivists^{1/} and to the Special Study on arrest, detention and exile.^{2/}

200. France reports that personal freedom is guaranteed under very special provisions. A section of the Penal Code (articles 114 to 122) is entitled "infringements upon freedom". It provides for severe penalties against any Minister, magistrate or official who commits arbitrary acts against the freedom of citizens, including acts of negligence resulting in illegal imprisonment. Another section (articles 341 to 344) lays down penalties for arbitrary arrest and restraint committed by private individuals. To the charges applicable in this respect in the metropolitan country, a Decree of 19 November 1947 adds others which apply to the overseas or Trust Territories: these deal with plotting to deprive persons of their freedom, and with bondage between a debtor and a creditor.

201. Hungary refers to the Constitution, promulgated in Law No. 1949:XX, which lays down in article 57, inter alia, that freedom and inviolability of the person is safeguarded. Reference is also made to Law-Decree No. 1953/13 establishing the Supreme Public Prosecutor's Office,^{3/} which is charged with the duty, inter alia, of ensuring that nobody shall be deprived of his personal liberty. The Government, however, states in this connexion, that following the counter-revolution of October-November 1956, it was temporarily forced to resort again to the institution of the public security custody in order to restore public order and security. It emphasizes that the explanation for this exceptional case of restriction of personal freedom lies in the emergency situation and the restriction is essentially of a temporary character: its duration will not

1/ See Yearbook on Human Rights for 1953, p. 77.

2/ This is dealt with under article 9.

3/ See Yearbook on Human Rights for 1953, p. 124.

exceed one year. The provisions relating to public security custody are in many respects more favourable for the persons affected than the rules by which earlier cases of internment were governed.

202. Public security custody may be ordered by the police only with approval of the competent public prosecutor and a complaint may be lodged against the decision. The pertinent decree provides for an ex officio review of each case by the supreme public prosecutor within thirty days from the date of detention. If the grounds for detention do not exist or have ceased to exist, the supreme public prosecutor takes immediate measures to discontinue. This review has to be repeated within three months from the date of taking into custody. These rules afford adequate safeguards against unjustified restriction of the personal freedom of nationals.

203. Israel reports a decision of the Supreme Court of 17 May 1956 concerning the right to speedy execution of judgement. The case involved a defendant who was sentenced to imprisonment and who, after such sentence became final, presented himself to the police in order to serve the sentence. He was asked to go home and was told that in due course he would be arrested to serve his term of imprisonment, which was not done until after two months later. The Court agreed with the defendant that during those two months he was bound to stay at his house and could not leave his town for fear he might be considered a fugitive from justice. The Court held that an accused person on whom sentence has been passed, has the right to serve his sentence immediately after its pronouncement.

204. Nepal refers to the Civil Liberties Act of 1955 which provides in article 12 that no person shall be deprived of ... personal liberty except according to the procedure established by the general law.

205. The Philippines refers to the constitutional provision prohibiting deprivation of liberty without due process of law (article III, sec. 1, cl. 1, Constitution). A case is cited in which the Supreme Court interpreted "liberty" to mean:

"That measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of the freedom in others ... (It) includes the right to exist and the right to be free from arbitrary personal restraint or servitude ... (It) cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right to enjoy the faculties with which he has been endowed for the common welfare" (Rubi v Provincial Board (39 Phil. 660)).

206. Sweden states that the right to liberty and security of person is protected in the Constitution (article 16 of the Instrument of Government)^{1/} and that no instances of deprivation of liberty other than those sanctioned by that article exist in Swedish law.

207. The United Kingdom refers to the article on the subject of habeas corpus contributed to the Yearbook on Human Rights for 1949^{2/} and to the statement on freedom from arbitrary arrest and detention submitted in 1955. The Government states that owing to the recurrence of outbreaks of violence in Northern Ireland it was found necessary at various dates during the period under review to bring into operation the emergency powers (Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-43) referred to in the contribution to the Yearbook of 1955, including the power to arrest suspected persons without warrant and to detain such persons pending investigation. These powers have been exercised only to the extent strictly required by the exigencies of the situation.

3. The right to security of person

208. France refers to articles 305 to 308 of the Penal Code, the purpose of which is to protect individuals from threats, and to the articles which protect physical and moral integrity (see paragraphs 214 and 215 below).

209. These provisions also apply in the Autonomous Republic of Togoland and in the Trust State of the Cameroons. However, the self-government granted to these two Territories will enable them to adapt these laws to local conditions.

210. The Philippines refers to provisions of the Constitution concerning economic and social rights as falling under the term security. These are rights relating to social justice (article XI, section 5); the protection of labour (article XIV, section 6); expropriation of lands, upon payment of just compensation, for subdivision and distribution at cost to individuals (article XIII, section 4); the maintenance of a complete and adequate system of public education (article XV, section 5); creation of scholarships in arts, science and letters (article XIV, section 4).

1/ Ibid., p. 262.

2/ Ibid., pp. 229-234, (1949).

211. Sweden states that the right to security of person is guaranteed in the Constitution by article 16 of the Instrument of Government.

212. The United Kingdom reports that the security of the person from injuries inflicted by others is effected by the operation of both criminal and civil law. Civil and criminal proceedings are also possible in respect of accidents where the necessary degree of negligence can be established. Accidents in the course of employment where no cause of action arises, which were formerly the subject of provisions in special legislation relating to industrial injuries, are now covered by social security legislation.

213. The Government adds that the existence of a well organized and efficient police force is an essential element in the protection of life, liberty and security of person, by reason of their functions in the field of prevention, detection and prosecution of crime.

4. The right to physical integrity

214. Finland reports that freedom and physical integrity may be infringed upon when this is necessary in order to achieve certain aims in connexion with penal procedure, to maintain public order and security and to attain certain social objectives.

215. The principal provisions which allow physical integrity to be infringed upon are contained in the following statutes: (1) According to Act No. 83/1950 and Decree No. 234/1950 relating to sterilization, a person suffering from mental disease or idiocy may be sterilized without his consent if the mental disturbance is likely to appear in his descendants or to deprive his children of the necessary care. The order or authorization for sterilization is given by the Medical Board. The decision of the Medical Board is not subject to appeal (articles 1, 3 and 9 of the Act, and article 7 of the Decree); (2) According to Act No. 84/1950 and Decree No. 233/1950 relating to castration, a person who, by virtue of a judgement to which legal effect has been given, has been found guilty of an offence or of an attempted offence showing that he is a danger to others by reason of his sexual instincts may be castrated without his consent. Similarly, a person suffering from idiocy or permanent mental deficiency who is being treated in a psychiatric hospital or similar institution and who, by reason of

the nature of his sexual instinct, is a danger to others may be castrated without his consent if there is sufficient evidence to justify such action. The order or authorization for castration is given by the Medical Board. This decision may be the subject of an appeal to the Supreme Court (articles 1, 3, 4 and 12 of the Act); (3) According to the Act of 30 December 1946 concerning blood-group identification for the purpose of determining maintenance obligations towards a child born out of wedlock (article 1), the court may require the mother of the child to submit a medical certificate to the effect that the required blood sample has been taken from her and from the child; (4) According to Decree No. 245/1936 concerning physical examinations for the purpose of obtaining anthropometric data, the police authorities are authorized, in the investigation of an offence or a crime, to subject a person to the necessary physical examination. They may also take this action in order to determine the identity of a person or to register a person being held for trial or examination in connexion with the commission of an offence or a crime or a person arrested for vagrancy or some other reason; (5) According to article 33 of the Decree concerning the coming into force of the Penal Code, a detained person may be searched in connexion with the investigation of an offence or crime; and (6) According to articles 20 (707/49) and 122 (704/49) of the Customs Act (Act No. 703 and 704/1949), the same action may be taken against other persons as a coercive measure in the course of a criminal investigation.

216. There are also cases where the legislation on public health allows the physical integrity of a person to be infringed upon for the purpose of promoting hygiene and preventing disease.

217. France refers to articles of the Penal Code (309 to 311, 315, 316, 320, 330 and 335) which protect the physical and moral integrity of a person against blows, even though involuntary, and against mutilation, rape, immoral exhibitions, immoral conduct and so on.^{1/}

^{1/} For statement on Togoland and Cameroons, see paragraph 209 above.

218. The Government refers to a judgement of 11 July 1956 in which the Council of State held that refusal to undergo a surgical operation did not justify taking away a pension (Ministre des Anciens Combattants c/ Gros - Recueil des Arrêts, p. 326).

219. Sweden refers to previous statements in which it had been reported that, according to Swedish law, persons suspected of having been intoxicated while driving motor vehicles have to undergo blood tests regardless of whether they consent to it or not. In paternity cases, the judge may also order the mother to undergo a blood test regardless of her consent.

5. Penal sanctions against violation of the right to life, liberty and security of person

220. Brazil refers to Act No. 1802 of 5 January 1953 which defines offences against the State and against the political and social order.^{1/} This law, inter alia, prescribes penalties against any person who makes an attempt on the life, liberty or integrity of the person of certain officials of the Federal and State Governments and of foreign States, and against a judicial or police authority who, acting for dogmatic, political or social reasons, inflicts bodily harm, insults or coerces (or permits another to do bodily harm to, insult or coerce) another person who is subject to his authority.

221. China states that article 305 of the Criminal Code, which punishes any person who intimidates another by putting him in fear of injury to life, body, liberty, reputation or property, ensures respect for the right to life. It further states that during the period from 1954 to 1956, about seventy persons involved in some sixty cases of such an offence were convicted by the courts in the free area of China. The limited number of such cases shows that respect for human rights has been generally well observed.

222. Finland reports that the Penal Code of 19 December 1889, as subsequently amended, gives a more precise definition of the legal protection guaranteed by the Constitution and of the means by which that protection is ensured.

Chapters 21 to 23 of the Code contain the provisions dealing with offences

^{1/} For a full text of this Act, see Yearbook on Human Rights for 1953, pp. 23-26.

against life and physical integrity, and chapter 25 contains the provisions dealing with offences against freedom.

223. France states that the principle laid down in article 3 of the Universal Declaration is common to metropolitan France and to the people of overseas territories under the Constitution of 27 October 1946.

224. The Government also reports that, in actual practice, the life, freedom and safety of persons are guaranteed in a preventive sense by the order which is maintained by the police. However, any infringement in this regard, regardless of where it takes place, is subject to penalties that are everywhere the same and are pronounced by identical courts in metropolitan France and in the overseas départements and overseas territories.

225. Morocco reports that, with respect to Moroccan nationals, respect for this provision is guaranteed by the following articles of the Moroccan Penal Code, which was promulgated by a dahir dated 24 October 1943: articles 194 to 198 (penalties for abuse of authority); articles 224 to 234 (penalties for homicide); articles 267 to 270 (penalties for violations of personal freedom); and articles 332 and 333 (penalties for violating the privacy of a person's house or forcibly dispossessing a person of his immovable property). With respect to foreigners, the pertinent Penal Code (which is the French Penal Code made applicable to the present judicial system by virtue of a dahir dated 12 August 1913) affords similar guarantees of the "right to life, liberty and security of person".

226. Hungary refers to Law No. 1946:VII which prescribes, in article 2, that felony is committed by a person who, inter alia, incites against the realization of the personal freedom and equal rights of nationals.

ARTICLE 4

227. The following questions relating to Article 4 have been dealt with in the reports:

1. Prohibition of slavery and the slave trade
2. Prohibition of involuntary servitude
3. Prohibition of forced labour
4. Cases in which compulsory labour is required
5. Control of traffic in women

Developments during 1954-56

228. Six governments reported developments during the period under review: Brazil (see paragraph 249); Czechoslovakia (see paragraph 250); Finland (see paragraph 230); Hungary (see paragraph 252); Israel (see paragraph 243), Nepal (see paragraph 242); and Pakistan (see paragraphs 235, 244 and 247).

1. Prohibition of slavery and the slave trade

229. China reports that, in addition to the general constitutional guarantees of human rights, the Criminal Code provides a penalty of imprisonment for not less than one or more than seven years for any person causing another to become a slave or to live in conditions or restricted freedom similar to slavery (article 296).

230. Finland reports its accession to the International Slavery Convention of 25 September 1926 by Decree of 11 November 1927, and to the Protocol amending it of 7 December 1953 by Decree of 31 March 1954. The Government also states that the Penal Code contains specific provisions against deprivation of liberty with intent to bring a person into slavery and against the slave trade.

231. France reports that in approving and signing the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Customs and Practices Analogous thereto of 7 September 1956, France confirmed her traditional position. The Government refers to the Decree of 27 April 1848 which proclaimed the final abolition of slavery. Article 6 of the Constitution of 4 November 1848 provided that slavery shall not exist in any French territory. This was one of the fundamental maxims of ancient French Public Law contained in the Edicts of 1315, 1318 and 1553. Since the nineteenth century, France has played an important part in the world suppression of the slave trade, and has always systematically put an end to slavery and analogous institutions and practices in all the territories under her control.

232. The Government reports that all these provisions apply to the overseas territories, to Togoland and to the Cameroons.

233. Morocco reports that slavery has been completely suppressed in Morocco; the last remaining vestiges of "domestic servitude" have been finally prohibited.

234. Norway states that slavery disappeared about 1200.

235. Pakistan refers to the Constitution of 1956 under which all forms of slavery are prohibited (article 16).

236. Sweden reports that Swedish Penal Law (article 15) corresponds to the prohibition of slavery and servitude under article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

237. The United Kingdom outlines the historical background leading to the abolition of personal slavery, "villeinage" and the slave trade in Britain. Personal slavery disappeared soon after the Norman conquest. The last recorded case of an attempt to assert rights of villeinage was in 1618 (Noy. 27). In 1806 the importation of slaves by British subjects into foreign territories and the import of slaves from British territories was prohibited (46 Geo 3, c, 52 [repealed]). In 1824, all dealings with slaves were made criminal offences and all contracts therewith became unlawful (Slave Trade Act 1824, sections 1 and 10). Slavery was abolished throughout British possessions abroad from 1 August 1834 (Slavery Abolition Act 1833). In 1843, the effect of the Act of 1834 was extended so that it is piracy for a British subject to engage in the slave trade even inside foreign territory (Slave Trade Act 1843).

238. Slavery as a status is not recognized in the law of Scotland and the courts will not enforce the right of an owner over his slave though both may have come from a country in which slavery is legal (Knight v Wedderburn, 1788, M. 1454 S). The restrictions of workmen in coal and salt mines who were transferrable to a purchaser of the mine and subject to prosecution if they quitted their employment, was finally abolished in 1799.

239. With respect to the Non-Self-Governing Territories, the United Kingdom reports that the notification of the extension of the 1956 Supplementary Convention on Slavery (although not strictly relevant to the period 1954-56) shows that the vast majority of British Non-Self-Governing Territories have already accepted its application to them.

2. Prohibition of involuntary servitude

240. The Philippines refers to the Bill of Rights guarantee providing that no involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted. This provision is self-executing whenever the nature of the case permits and the law or contract providing for servitude of a person against his will is forbidden and void (U.S. v. Cabanag 9 Phil. 64).

241. The revised Penal Code penalizes anyone who shall (1) purchase, sell, kidnap or detain a human being for the purpose of enslaving him or assigning the

offending party to some immoral traffic (article 272); (2) retain a child in servitude against its will on the pretext of paying his parents' debts (article 273); (3) compel a debtor to work against his will as a domestic servant or farm labourer in payment of his debts (article 274). The Civil Code provides that a stipulation in a contract of household service that such service shall be without remuneration is void (article 1689).

3. Prohibition of forced labour

242. In Nepal the Civil Liberties Act of 1955 includes a provision prohibiting forced labour.

243. Israel reports its ratification, on 7 June 1956, of the Convention concerning forced or compulsory labour.

244. In Pakistan the Constitution of 1956 prohibits forced labour in any form but the State may require compulsory service for any public purpose.

245. Sweden reports that forced labour is prohibited under Swedish law except in certain specific cases.

246. The United Kingdom refers, with respect to the Non-Self-Governing Territories, to reports made to the ILO on the forced labour conventions.

4. Cases in which compulsory labour is required

247. In Pakistan compulsory labour may be required for any public purpose (see paragraph 244, above).

248. Sweden reports that, according to Swedish law, vagrants and persons neglecting their duty of maintenance imposed by law may be required to perform forced labour. Subject to legal control persons belonging to these categories and alcoholics may be detained against their will and confined to special institutions. All circumstances in which compulsory labour may be imposed under Swedish law are covered by the exceptions listed in article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5. Control of traffic in women

249. Brazil reports that, on 15 April 1956, it promulgated by Decree 37176 the Protocol (1947) to amend the Convention for the Suppression of Traffic in Women

and Children concluded in Geneva on 30 September 1921, and the Convention for the Suppression of Traffic in Women of Full Age concluded in Geneva on 11 October 1933.

250. Czechoslovakia reports that amendments to the Penal Code (Act 63/1956 Collection of 19 December 1956) introduce, in section IV, new provisions concerning procuring. The penalty for anyone acting as intermediary or coercing or inducing anyone to commit prostitution or deriving profit from prostitution committed by another is three years deprivation of liberty (section 243).

251. The Government refers also to the Act on offences against Public Morals covering prostitution, gambling, etc., which provides a penalty of deprivation of liberty for three months to two years for "anyone who offends public morals by making his living by devious methods and who avoids honest work for some length of time or who commits an act of gross indecency or disturbance giving proof of his evident lack of respect for society" (section 188).

252. Hungary reports the promulgation by Decree 1955:34 of the Convention for the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others of 21 March 1956.

253. In the Philippines, the Penal Code penalizes anyone who purchases, sells, kidnaps or detains a human being for the purpose of assigning the offending party to some immoral traffic (article 272; see para. 241 above).

ARTICLE 5

254. The following subjects relating to article 5 have been dealt with in the reports:^{1/}

1. Constitutional or other general provisions prohibiting torture or cruel, inhuman or degrading treatment
2. Penal or other sanctions against the use of torture or cruel, inhuman or degrading treatment
3. Penalties imposed for crimes
 - (a) Adults
 - (b) Juveniles
4. Treatment of offenders
 - (a) Adults
 - (b) Juveniles

Developments during 1954-56

255. Six Governments reported developments during the period under review.

Australia (see paragraph 296); China (see paragraphs 267, 278, 279 and 294); Czechoslovakia (see paragraphs 280 to 288, and 295); France (see paragraph 292); Israel (see paragraphs 301 to 304); Panama (see paragraph 306).

1. Constitutional or other general provisions prohibiting torture, or cruel, inhuman or degrading treatment

256. Cambodia refers to the constitution which prohibits the use of unnecessary vigour or compulsion in the course of an arrest, any recourse to moral pressure or physical brutality in the case of a person in detention and any treatment which may augment the penalty applicable by law to a convicted person (article 4).

257. France reports that French law does not prescribe any penalty involving torture or cruel, inhuman or degrading treatment. Torture as a means of ascertaining the truth was abolished in the eighteenth century by the

^{1/} Matters relating to the right to physical integrity are dealt with under article 3 above.

Royal Proclamation of 24 August 1780 and the Edict of 8 May 1788. The last form of torture employed as a punishment disappeared from French legislation in 1832 with the repeal of the law providing for the amputation of the hand in cases of parricide.

258. The Government likewise states that the safeguards guaranteed to defendants under French penal law and penal procedure prevent the obtaining of confessions by duress or trickery. The Government refers to the Act of 8 December 1897 respecting the procedure in preliminary investigations (which has been amended several times) and to numerous articles of the Code of Criminal Procedure whose chief purpose is to provide important safeguards for the accused.

259. Morocco reports that torture and cruel, inhuman or degrading treatment do not exist in Morocco.

260. Norway states that torture is expressly forbidden under the constitution (section 96, article 2) and this prevents the legislator from providing for the use of torture.

261. The Philippines reports that the Bill of Rights of the Constitution provides that excessive fines shall not be imposed nor unusual or cruel punishment inflicted.

262. Sweden states that the Swedish Code of judicial procedure and Swedish legislation concerning the execution of penalties are in full accordance with article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the text of which is identical with article 5 of the Universal Declaration.

263. The United Kingdom reports that the English common law never tolerated torture of an accused. The extraordinary Criminal Court of Star Chamber which existed for some time prior to 1640 was, however, used to justify the employment of unusual means in the detection and punishment of crime. The result of the abolition of that court in 1640 was that torture disappeared simultaneously from English criminal procedure.

264. In the Scottish courts torture was never, in early times, an ordinary instrument of inquisition. During religious trials of the seventeenth century there was, however, a period when torture was used. In 1708 torture was finally forbidden by statute (7.Anne, c.21) to be used in any situation or on a charge of any crime whatsoever.

265. The United Kingdom states, with respect to the Non-Self-Governing Territories that persons are not subjected to torture, nor to cruel, inhuman or degrading treatment or punishment.

2. Penal or other sanctions against the use of torture or cruel, inhuman or degrading treatment or punishment

266. Cambodia refers to the constitution under which persons committing, helping to commit or instigating certain acts are held personally responsible for them (see under 1 above).

267. China cites the provisions of the Penal Code (articles 125-127) which make it a criminal offence for any public officer to use threat or violence in order to obtain a statement, to maltreat a prisoner while he is being escorted or kept in confinement, or unlawfully to execute or fail to execute any penalty. Both the competent authorities and the general public have always shown deep concern over such offences and do not hesitate to disclose and prosecute the offenders. During 1954-1956, thirty-one persons were charged with one or the other of these offences and found guilty.

268. Finland reports that the Penal Code lays down penalties for the use of torture to obtain confessions (chapter 25, article 11).

269. France states that the validity of confessions extorted by duress, particularly during the preliminary phase of the investigation of a case, is not recognized in its jurisprudence. Except in cases of flagrant délit, i.e. of an offence which is being or has just been committed, officers of the judicial police may not carry out a search or an arrest without a warrant from an examining judge (Chambre criminelle, 22 January 1953, Parliamentary Enactment 53, page 533). If a person suspected of a crime is arrested and searched without a warrant, any admissions made by him while being thus illegally interrogated cannot be considered to have been made freely and may not be admitted in evidence by the judge (ibid.). If fraudulent practices are used to obtain confessions from an accused person, the preliminary investigation is declared null and void. The Government refers to a decision given by the Joint Chambers of the Court of Cassation on 31 January 1888 (S.89-I-241) in which the action of an examining judge who imitated the voice of a third person in a telephone call to the accused was censured. On another occasion, an examining judge was removed from a case because he thought that he was entitled to resort to hypnotism.

270. The French Penal Code contains provisions that are specifically intended to prevent the improper use of force. If in the exercise of, or in connexion with, his duties a police officer uses force or causes force to be used against any person without good and sufficient reason, he is liable to the maximum penalty prescribed for an offence if such use of force constitutes an offence (Penal Code, articles 309 et seq.) and to the higher penalty prescribed for a crime if it constitutes a crime (Penal Code, article 186).

271. An official who, in the exercise of his duties, violates the privacy of a person's house is much more severely punished than a private citizen who commits the same offence (Penal Code, article 184).

272. Morocco cites the provision of the Penal Code (article 194) under which any public official who, in making or ordering an unlawful arrest, uses force or threats, or causes force or threats to be used, against any person without good and sufficient reason is punishable by imprisonment for a term of six months to five years without prejudice to the more serious penalties prescribed by the Penal Code (see in particular articles 235 et seq. prescribing penalties for the wilful use of force). A fine of 25,000 to 500,000 francs may be imposed as an additional penalty.

273. Norway reports that the use of torture is punishable under the Penal Code if it amounts to bodily injury; the employment of illegal means by a public servant to obtain evidence or a confession is also a criminal offence (section 115).

274. The Philippines states that the officer or employee who mistreats a prisoner or detainee by imposing upon him unauthorized punishment or inflicting punishment in a cruel or humiliating manner is guilty of a penal offence (article 234 of the revised Penal Code). The extortion of confessions by the employment of what is commonly known as "third degree" methods is also a crime. The Government cites an extract of a decision of the Court of Appeals in which it very strongly disapproved of such methods of investigation (People v. Miguel, 44 O.G. 2791).

275. The United Kingdom reports that the English judges, in 1912, formulated certain standards of conduct which are required to be observed by the police investigating crime, in order that any statement made by the accused before the trial can be admitted in evidence. Unless the Court is fully satisfied that a statement was made voluntarily, it will refuse to admit it as evidence. The

Judges' Rules have the effect that any statement by the accused after the use of violence, however slight, would be excluded as evidence as not having been made voluntarily.

276. In Scotland, there is no express formula corresponding to the Judges' Rules, but a long series of cases has demonstrated that the Courts will reject evidence of statements made by an accused where they are not satisfied that he has been fairly treated (see, for a recent restatement H.M. Adv. v. Rigg, 1946, J.C.1; (1946) S.L.T. 49).

3. Penalties imposed for crimes^{1/}

(a) Adults

277. Cambodia refers to the constitution which provides that penalties, whether entailing deprivation or restriction of liberty, must conduce to the rehabilitation of the offender (article 5).

278. China refers to the Regulations for the Suppression of Opium and other Narcotic Drugs during the period of National Emergency which were promulgated and came into force on 3 June 1955. These were adopted in view of the change in international and domestic situations and provide much heavier penalties for narcotics offences than those prescribed in the Penal Code of 1 January 1935 under which such offences had previously been punishable. The penalty for narcotics offences, under the Penal Code, was imprisonment for not more than six months, detention, or fine (not more than 500 yuan); the maximum penalty for illicit manufacture, sale or transport of narcotic drugs was ten years imprisonment. Under the new regulations the penalties imposed are imprisonment for three to seven years for a first offence, for a term equivalent to one and two-thirds of the original sentence for a recidivist, and the death penalty for a third offence and for the illicit sale or transport of narcotic drugs. The regulations, however, also allow persons to apply, within a certain time limit, for permission to seek a cure, and those subsequently found to have been cured are exempt from punishment. Judicial organs are authorized to commit addicts for compulsory medical treatment.

^{1/} Information relating to the death penalty has been included under article 3 above.

279. The Government also refers to the Regulations governing Security Measures against Persons convicted of Larceny or the Offence of Receiving Stolen Goods during the Period of National Emergency designed to meet the local situation in Taiwan, which were promulgated and came into force on 30 December 1955. On 30 January 1957 these regulations were amended in favour of the accused. The provision under which persons over eighteen convicted of larceny or receiving stolen goods were, if they had no regular occupation or fixed place of abode, ordered to work in certain labour institutions was repealed because it did not take into account the actual social conditions. The period of confinement under the original regulations was three years, with no possibility of requesting a remission of sentence until two years had been completed. After three years the court might still be requested to authorize an extension of the period of confinement. No such provision was included under the new regulations and the provisions regarding the period of confinement were made much more flexible. With regard to offenders sentenced to compulsory labour as a security measure the new Regulations amended the period of time for which such sentence could be made applicable.

280. Czechoslovakia reports on amendments of 19 December 1956 (Act No. 63/1956 Collection) to the Penal Code (Act No. 86/1950 Collection), many of which deal with penalties.^{1/} The Government states that the amendments enable the courts to extend and intensify the educational purpose of penal jurisdiction. The penalty of life imprisonment is replaced by the penalty of deprivation of liberty for twenty-five years (section I).

281. Under the Specific Rules of the Penal Code the possibility of conditional sentence for a number of offences was excluded even where the circumstances of the case and record of the offender warranted such a sentence. The new Act repeals this and extends the range of cases in which conditional sentence may be imposed by providing that the penalty of deprivation of liberty for two years may be suspended conditionally. Prior to this amendment a sentence could be suspended only if the penalty involved did not exceed a one year term (section III).

^{1/} Amendments relating to capital punishment and provisions concerning the act of abortion are given under article 3 above. New provisions concerning procuring are described under article 4 above. The Government reported all these amendments under articles 5-12 of the Declaration.

282. If the offender has lived a decent and law-abiding life throughout the period of his parole, the penalty imposed may, in many instances, be revoked. If the court has found that the offender has duly fulfilled all the conditions of the suspended sentence while on parole, it should also determine whether the remainder of the sentence be served or not (section 63).

283. The new Act, while providing for the circumstances under which property may be confiscated leaves considerable discretion to the court. Such a penalty may not be imposed for offences ensuing from an act of negligence nor as an additional penalty to a conditional sentence of deprivation of liberty.

Confiscation of property may not apply to funds and objects which are essential to the offender's livelihood or to that of his dependents.

284. Fines continue under the new Act to be a facultative penalty. They may not be imposed in addition to confiscation of property or to the penalty of corrective measures. The scale of fines which may be imposed has been amended and the maximum fine reduced (from 2,000,000 Crowns to 500,000 Crowns). This amendment is in line with changes in the economic and political situation as well as the purpose which the penalty is intended to serve.

285. The possibility of waiving punishment completely, previously applicable only to juveniles, is extended under the new Act. The court may now waive punishment if the offender is otherwise known to be leading a decent and hardworking life and if the offence involved is a minor one.

286. The new Act considerably extends the possibilities of imposing the penalty of corrective measures which may now be imposed instead of imprisonment for a term of up to six months or a term of one month to one year. Provided this penalty serves its purpose it will replace the former penalty of short-term imprisonment, which had only a very minor educational effect.

287. Under the new Act the penalty of loss of citizenship which included also the loss of civic rights, dishonourable discharge from the army and confiscation of all property is repealed. The former provisions on the loss of civic rights are also substantially amended and made mandatory only in connexion with capital punishment. Loss of all civic rights or of certain specific civic rights, and loss of the right of franchise and the right to act as a people's judge remain in force as a rule only for such time as the offender is serving his sentence of deprivation of liberty.

288. The new Act mitigates the requirements previously in force with regard to erasing a sentence from the penal record of an offender so that after he has served his penalty and led a decent and law-abiding life, the sentence against him may not remain as an obstacle to him.

289. Finland reports that the general penalties applicable under Finnish law are: the death penalty, rigorous imprisonment, imprisonment and fine (Penal Code, chapter 2, article 1). The main difference between rigorous imprisonment and imprisonment is that in the former case the prisoner is obliged to work for the benefit of the State but in the latter he may, if he wishes, work for his own benefit.

290. France reports that the only form of corporal punishment still in use, in Metropolitan and Overseas France alike, is the death penalty. It is administered painlessly by decapitation (article 12 of the Penal Code) by means of the guillotine, an instrument that causes instant death. In the absence of a guillotine the offender is executed by a firing squad (Ordinance of 3 March 1944). Capital punishment is carried out within the particular penitentiary establishment and without publicity (Decree of 24 June 1939).

291. The only authorized forms of punishment are those provided for in article 69 of the Decree of 19 January 1923 and article 66 of the Decree of 29 June 1923. The penitentiary system has undergone reform with a view to enabling the prisoner to be returned to society, and the penalty is made to serve an educational purpose wherever this can be reconciled with the need for detention.

292. The Government mentions three recent Acts concerned with penalties, in which the same social trend is reflected: (1) the Act of 15 April 1954 concerning the treatment of alcoholics dangerous to others; (2) the Act of 3 July 1954 under which relegation is made an optional sentence; by leaving judges free to exercise their discretion, this reform widens the scope for the individualized application of the penalty of relegation; and (3) the Act of 18 March 1955 concerning local banishment, which has revolutionized this form of punishment. Supervision has been relaxed and made more flexible and is now supplemented by educational measures designed to facilitate the prisoner's social rehabilitation.

293. The Government states that the various provisions of French criminal law are applied in the Overseas Territories as well as in Togoland (cf. the new article 26, paragraph 3, of the Statute) and the Cameroons (cf. article 14, paragraph 5, of the Statute).

(b) Juveniles

294. China, in referring to the amendments of 30 January 1957 to the Regulations governing Security Measures against Persons convicted of Larceny or the Offence of Receiving Stolen Goods during the Period of National Emergency, reports that under the original regulations young persons between the ages of fourteen and eighteen were, if convicted, exempt from punishment but it was compulsory to commit them to reformatory institutions as a security measure. The amended regulations provide that in the case of young offenders whose offence is of a minor character and who have no previous criminal record the prosecutor may waive criminal prosecution.

295. Czechoslovakia reports that, under the amendments to the Penal Code of 19 December 1956 (Act No. 63/1956 Collection), the provision that the courts may waive punishment if the offender is otherwise known to be leading a decent and hardworking life and if the offence involved is a minor one applies also to juvenile delinquents and may have a considerable educational effect on minor offenders. In such instances, the mere fact of the court pronouncing the offender guilty may suffice to bring about a lasting improvement.

4. Treatment of offenders

(a) Adults

296. Australia reports with respect to the Trust Territory of New Guinea and to Papua the abolition, through ordinances in 1954, of corporal punishment for all offences other than certain offences by juveniles, offences of a sexual nature against females, offences of violence such as garrotting and prison offences such as mutiny in prison. The ordinances reduce the extent and severity of corporal punishment and represent a substantial step in the direction of its complete abolition. With respect to the Trust Territory of Nauru, Australia states that all references to corporal punishment are deleted from the Criminal Code under section 3 of the Criminal Code Amendment Ordinance of 1955.

297. China refers to the Prison Act which emphasizes, in the spirit of article 5 of the Universal Declaration, the educational and correctional approach in the treatment of prisoners. Imprisonment and detention shall be carried out for the purpose of ensuring moral regeneration and social rehabilitation of prisoners.

/...

Instruments of restraint are not allowed to be used unless there is reason to believe that the prisoner may escape, commit suicide or be guilty of violence or other disorderly acts. For work done in prison, prisoners are paid wages. The law limits disciplinary measures against prisoners who break prison rules and guarantee to prisoners the right to file complaints against improper action by the prison authorities so as to protect their rights. Prisoners are classified in several grades according to their behaviour in prison. The higher the grade, the more favourable the treatment. During 1954-1956, 3,002 prisoners were graded under this system and 2,910 were promoted to a higher grade. Four hundred forty-three prisoners were released on parole after having served more than half their term.

298. Finland refers to a decree which provides that prisoners must be treated with kindness in accordance with the principles of law and human dignity (Decree No. 96/1950, article 55). The Government also refers to an Act on the isolation of dangerous recidivists (Act No. 317 of 9 July 1953) which provides that the court shall decide, in certain cases, whether, under this Act, a convict shall be isolated either in a special establishment for dangerous recidivists or a section of an ordinary prison set aside for that purpose.^{1/}

299. France states that penalties involving deprivation of liberty are not accompanied by any measure likely to impair human dignity. Sentences of forced labour and rigorous imprisonment (réclusion) are served in conditions very similar to those of imprisonment. Transportation was abolished by a legislative decree of 17 June 1938. The regulations for the administration of prisons prohibit the use of force or corporal punishment in dealing with prisoners.

300. The Government transmits an extract from the regulations for the administration of prisons to the effect that: "No employee or officer of the supervisory staff shall use force against a prisoner, address him in abusive, coarse or familiar language, smoke in a place of detention, employ a prisoner in his personal service or use a prisoner to assist him in his own work except in specially authorized cases". It is further provided that any contravention of these regulations shall be punishable in accordance with its seriousness. The

^{1/} See Yearbook on Human Rights for 1953.

Government explains that the courts have always interpreted these various provisions as having a very broad scope. The Court of Cassation considers the notion of "force" to be very comprehensive and to include "any kind of force, regardless of its nature or result" (Crim. 5 Dec. 1882-B 1822 No. 172).

301. Israel reports on a law passed in January 1956 to amend the Prison Ordinance of 1946 (Prisons Ordinance (Amendment) Law, 5716-1956; Sefer Ha-Hukim 195, p. 23). While under the old law every prisoner on parole was subject to a number of conditions such as daily reporting at a police station, the new law empowers the Parole Board to release prisoners on parole without imposing on them all or any of such conditions. The imposing of conditions is now a matter for the discretion of the Parole Board.

302. In 1956, new rules were enacted to the organization and government of military prisons. Among many other reforms, the new rules provide for the automatic remission of one third of every prison sentence unless the prisoner was found guilty of misconduct in prison.

303. The Government refers to section 16 of the Criminal Law and Amendment (Modes of Punishment) Law, 1954, which provides, inter alia, that every prisoner is under obligation to work, vests in the Parole Board the authority to exempt a prisoner from this obligation or to restrict it for reasons of health or for any other adequate reason. The law also provides that a prisoner may not be employed for any work other than in State institutions except with his consent and on customary terms of employment.

304. The Government cites a decision in which the Supreme Court sitting as High Court of Justice found that a prisoner is not entitled to claim certain benefits, such as four cigarettes a day and the like, but that he is entitled to outdoor walks; that the Director of the prison was not under a legal obligation to give a prisoner the opportunity to be heard before a decision to deprive him of benefits to which he had no legal claim was taken, except where punishment provided for in the Prison Ordinance was going to be inflicted. The court added, however, that the Director of the prison would do wisely to give the petitioner the opportunity to adduce his reasons why he declined to do certain work he had been ordered to do (Holzer v. Director of Central Prison, Decision of 6 June 1956).

305. Norway states that Norwegian law prohibits corporal punishment and that probation is largely resorted to in Norway.

306. Panama reports that every effort is made in prisons and penal establishments to bring the inmates back to normal social life in accordance with the principles of modern penology. The Government also reports that all those accused or convicted of political offences were pardoned by the President of the Republic pursuant to a decree of 30 October 1956 (Decree No. 355 Bis.).

307. The United Kingdom reports that the ancient methods of carrying out a death sentence and punishments such as public whipping, the pillory and the stocks went out of use many generations ago with the growth of the idea that the loss of liberty was itself a punishment, not merely a method of ensuring the defendant's appearance. In England, Wales and Scotland, whipping by order of a court of law (limited to cases of male juvenile offenders or male adults convicted of certain serious crimes) was totally abolished in 1948 (Criminal Justice Act 1948, s.2). In Northern Ireland, whipping may be inflicted on male adults convicted of certain serious crimes, e.g. robbery with violence and for certain offences specified in an enactment of 1922 (Civil Authorities (Special Powers) Act (Northern Ireland) 1922).

308. The infliction of corporal punishment in a prison is also prohibited by law except in the case of a male person serving a sentence of imprisonment, corrective training or preventive detention in England, who is guilty of mutiny or incitement to mutiny, or gross personal violence to an officer of a prison. In such case, the order must be made by a committee of independent visiting magistrates and confirmed by the Secretary of State (Prison Act 1952, s.18 and Prison Rules, 1949, Rules 45 (as amended in 1952) and 46, having effect under ss.47 and 54(3) of that Act).

309. Apart from those cases in which the death penalty can be imposed courts can impose no punishment of greater severity than detention, called by different names according to the type of institution in which the sentence is to be served. The various prison rules contain regulations relating to breach of discipline during detention (Prison Rules, 1949, Rules 43 and 44, as substituted by the Prison Rules, 1952, 44, 5 and 6; Prison (Scotland) Rules, 1952, Rules 43 and 45).

310. The United Kingdom reports, with respect to the Non-Self-Governing Territories, that the treatment of offenders follows generally the development of policy in the United Kingdom itself.

(b) Juveniles

311. China reports on two bills drawn up for early legislative approval and designed to provide a satisfactory and effective solution to the problem of juvenile delinquency. The first is based on the assumption that juvenile offenders should be taught rather than punished. It covers a number of questions relating to juvenile courts, the trial of minors, juvenile offences, conditions on which juvenile offenders may be released and committed to protective custody (see under articles 10 or 11 for further details). The sentence of the court should be carried out in reformatory institutions especially set up for the rehabilitation of young offenders. Those convicted for minor offences should be subject to reprimand or placed under probation. The period of confinement in a reformatory institution is limited to three years and may be extended for another three years but in no case beyond the age of twenty-one. If after one year confinement is unnecessary, he may be released on probation. If he is subsequently involved in a serious violation of probation rules, he may be recommitted to the institution to serve out the original sentence. The second bill deals with the educational methods to be used in reformatory institutions. Education should take the form of school instruction and military discipline may be applied wherever necessary to enforce strict control (chapter 2, articles 32-46). Teaching should lay emphasis on the subject of civics and the essential knowledge and skills for making a living.

312. The United Kingdom reports that in Northern Ireland whipping may no longer be inflicted on persons under seventeen years of age (Children and Young Persons Act (Northern Ireland) 1950, s.54). It was abolished in England, Wales and Scotland in 1948 (see paragraph 307 above).

ARTICLE 6

313. Governments have dealt in their reports with the legal capacity of every person to enjoy and exercise the rights recognized by law. Some reference is made to the limitations placed upon the exercise of their rights by certain groups of persons and to the problem of their legal representation.

314. No subject headings appeared to be necessary under this article.

Developments during 1954-56

315. Two Governments reported developments during the period under review: Czechoslovakia (see paragraph 317); France (see paragraphs 322 and 323).

316. China refers to the Civil Code which provides that the legal capacity of a person begins from the moment of birth, even from the time of conception if he is subsequently born alive, and terminates at the moment of death (articles 6 and 7). Section XXIV of the Criminal Code lays down penalties against abortion in order to protect the unborn. In accordance with articles 16 and 17 of the Civil Code, no person is allowed to waive his legal capacity, his capacity to dispose of his rights, or his liberty.

317. Czechoslovakia^{1/} refers to Act No. 64/1956, Collection, of 19 December 1956, which defines the rights of the accused in criminal procedure and specifies that such rights belong to the accused even if he has been declared non sui juris. In such case, those rights are exercised by the legal representative of the accused.^{2/}

318. Finland reports that every human being enjoys juridical capacity (capacité légale) in Finland.

319. France states that French law recognizes every human being as a person before the law and that it goes so far as to embody the maxim: "Infans conceptus pro nato habetur quoties de commodis ejus agitur" (articles 725 and 906 of the Civil Code).

^{1/} These developments were reported by the Government of Czechoslovakia under articles 6 to 12 of the Declaration.

^{2/} See also under article 11; "Safeguards for the Defence in Criminal Procedure"; and article 15 "Loss of Nationality".

320. The penalty of civil death, which was a concomitant of life sentences, was abolished by the Act of 31 May 1864. French citizens and citizens of the French Union who are not French nationals enjoy on an equal footing, regardless of personal status, the rights and liberties guaranteed by the preamble to the Constitution. The Government cites article 82 of the Constitution, which provides that those citizens who do not possess French civil status shall retain their personal status so long as they do not renounce it, and that this status may in no case constitute a ground for refusing or restricting the rights and liberties pertaining to the status of French citizens.

321. The recognition of the individual as a person before the law entails a degree of individualization that does not interest indigenous peoples, or even repels them, because they do not always appreciate its advantages.

322. The Government states that its main effort during the period 1954-1956 has been to stress the importance of the individual by such means as the establishment of more civil registry offices. It will henceforth be the responsibility of the locally elected assemblies to continue this work by improving the operation of the civil registration system under the existing legislation, by reforming the principles of customary law and so on. This is one of the results of the Act of 23 June 1956.

323. The Government cites a judgement delivered by the Court of First Instance of Diego Suarez on 12 May 1954 (Penant 1955- p. 262):

"The 1946 Constitution has laid down the principle that although the nationals of Overseas Territories are French citizens they shall, if they do not possess French civil status, retain their personal status so long as they do not renounce it, and that this status may in no case constitute a ground for refusing or restricting the rights and liberties pertaining to the status of French citizens."

324. Morocco states that every human being, Moroccan or foreigner, has the right to be recognized as a person before the law.

325. In accordance with the principle of the "statut personnel", the laws applicable to determine the degree of juridical capacity of foreigners and the procedure whereby minors and insane persons may be legally represented, are the laws of the countries of which the persons in question are nationals.

326. Norway states that inasmuch as he enjoys certain rights, every individual is recognized as a person before the law.

327. The United Kingdom reports that no one may be deprived of his inherent right to be regarded by the law as a personality enjoying and having the same general rights and duties as the rest of the population. The policy of the law is to grant special safeguards to those whom disability of age or intellect makes weaker than the average.

ARTICLE 8

328. The following questions relating to article 8 were dealt with in the reports:

1. The right to an effective remedy
2. Description of remedies
 - (a) Judicial orders to prevent infringements of fundamental rights
 - (b) Judicial decisions declaring unlawful laws, regulations or acts which constitute a violation of fundamental rights (with special reference to remedies against unlawful deprivation of liberty) 1/
 - (i) Grounds upon which proceedings may be initiated
 - (ii) Persons protected
 - (iii) Persons or agencies against whom proceedings may be initiated
 - (iv) Rules of procedure
 - (v) Enforcement of court decisions
 - (c) Right to compensation
 - (d) Criminal liability of persons violating fundamental rights

Some Governments have also referred to the right to send petitions to legislative assemblies, and to special procedures for control of legislative action by parliament. These are summarized under the heading: (e) Other remedies.

Developments during 1954-1956

329. Six Governments reported developments during the period under review:

Cambodia (see paragraph 331); Denmark (see paragraphs 345, 352, 360-361 and 381); Hungary (see paragraph 337); Nepal (see paragraphs 340, 347, 353, 365 and 371-373); Pakistan (see paragraphs 338, 348 and 358); and Panama (see paragraphs 341, 349, 354, 357, 362-363 and 366).

1. The right to an effective remedy^{2/}

330. Cambodia refers to the Constitution which provides (article 15) that anyone believing that his person or property has suffered arbitrary injury during a

1/ See also under article 3, Right to Liberty, and Article 9.

2/ See also under articles 1, 2 and 7, Denmark, paragraph 172 (Declaration of 19 April 1955 regarding the rights of the German minority in Southern Jutland).

period of emergency may claim moral or material reparation before the courts. Anyone abusing emergency powers to prejudice the material or moral rights of another shall be held personally answerable for his act.

331. The Government refers to an Act of 29 November 1955 under which legal expenses for judicial proceedings are reduced and the procedure for obtaining legal assistance simplified; and to an Act of 21 May 1956 under which justices of the peace were established for each local district to deal with matters concerning "l'état-civil".

332. China reports that, under the Constitution, everyone is entitled to an effective legal remedy for acts violating the fundamental rights granted by the Constitution or by law. The right to file complaints and institute legal proceedings as the means to seek redress of grievances is recognized (article 16).

333. Finland reports that article 13 of the Constitution, which states that no citizen may be tried by any court other than that which has jurisdiction over him in accordance with the law, provides safeguards to all citizens against denial of justice by the competent courts.

334. France reports that every person, national or alien, has the right to an effective remedy before all courts. The right of aliens domiciled in France to bring before the courts any dispute arising between them has been recognized by judicial decisions (Cour de Cassation, Chambre Civile, 21 juin 1942, Sirey 1949-I-121).

335. The right to an effective remedy is enjoyed by the inhabitants of the overseas territories whatever their legal status. Since 1946 the number of courts at all levels in those territories has been greatly increased.

336. Hungary refers to Law-Decree No. 1953:13 on the establishment of the Supreme Public Prosecutors Office, which provides (article 1) that the Supreme Public Prosecutor shall supervise the observance of the law in order to ensure the protection of the rights and legal interests guaranteed to Hungarian nationals by the Constitution. He is, further, to do his utmost to make sure that everyone is relieved of all unlawful restrictions and arbitrary actions.

337. The Government refers also to Law No. 1954:II on the organization of the courts which provides (article 2) that the courts, in administering justice will protect the rights and legal interests guaranteed by the Constitution.

338. Pakistan reports that the Constitution guarantees the right to move the Supreme Court and the high courts by appropriate proceedings for the enforcement of rights conferred by the Constitution.

339. The United Kingdom describes the remedies against violations of fundamental rights which are available before the civil and criminal courts (see paragraphs 342, 350, 374 and 379 below). Actions can be brought against organs of the State substantially in the same way as against an individual. The Government states that the effectiveness of these remedies is secured by the arrangements for trial without undue delay of both criminal and civil cases, the efficiency of police forces in detection of the perpetrators of crimes and the maintenance of a high standard of competence and impartiality in the judiciary. The Government refers to an article on the independence of the judiciary.^{1/}

2. Description of remedies

(a) Judicial orders to prevent infringements of fundamental rights

340. In Nepal the Civil Liberties Act of 1955 provides (article 17) that if any person has reason to believe that any right conferred on him by the Act is about to be invaded, he may ask the court to issue an injunction restraining the defendant from invading such right.

341. In Panama, article 31 of Act No. 46 of 22 November 1956 on fundamental guarantees provides that when a judge or court has been informed by a denunciation that it is intended to detain a person illegally, they shall issue the necessary orders to prevent such action, and command the appropriate authority to bring the person before the court forthwith in order to decide upon the case in accordance with law.

342. The United Kingdom reports, inter alia, that persons whose rights are threatened may request the civil courts to issue injunctions against the perpetration or repetition of a wrong, breach of which renders the person liable to imprisonment.

^{1/} See Yearbook on Human Rights for 1952, pages 292-298.

(b) Judicial decisions declaring unlawful laws, regulations or acts which constitute violations of fundamental rights (with special reference to remedies against unlawful deprivation of liberty)

(i) Grounds upon which proceedings may be initiated

343. Ceylon refers to a court decision of 1956 dealing with the use of habeas corpus proceedings in the matter of custody of children (see under article 16 below).

344. China refers to the Constitution which states (article 8) the right of any person who is illegally arrested or detained to petition the courts for an investigation. This right is implemented by articles 1-9 of the Act on the Right to Trial by Court of 1 June 1935, as amended on 26 April 1948. This provides, inter alia, that the person shall be released if the court finds that the detention is unwarranted.

345. In Denmark, Act No. 173 of 11 June 1954 implementing article 71 (b) of the Constitution, provides that the lawfulness of any detention which is not ordered by the judicial authorities shall, upon request, be determined by the courts.^{1/}

346. France states that any administrative regulation which violates the fundamental rights of the people may be annuled, upon request, ("recours pour excès de pouvoir") by the administrative courts (ordinance of 31 July 1945 on the Council of State, article 32; decree of 30 September 1953, article 2).

347. In Nepal, the Supreme Court Act of 1956 provides that if the laws do not afford any remedy in case of violation of a given right, the Supreme Court shall have power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of such right (article 11).

348. Pakistan reports that under article 22 of the Constitution the Supreme Court may issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, for the enforcement of any of the rights conferred in the Constitution.

349. Panama refers to Act No. 46 of 24 November 1956 concerning Fundamental Guarantees, which institutes, inter alia, the following remedies: (i) Any person may request the Supreme Court to declare unconstitutional any law, decree or administrative regulation which he deems to be contrary to the constitution (article 65); (ii) any person may request the superior courts to see to it that an

^{1/} See under article 9.

administrative order allegedly violating the rights set forth in article 51 of the Constitution, be revoked; and (iii) every person who claims to be illegally detained by order of any public authority or official, is entitled to apply for a writ of habeas corpus, in order that the court may decide on the lawfulness of his detention and order his release if the detention is not lawful. In accordance with article 2 of the Act, "illegal" deprivation of liberty includes detention without the guarantees provided for in article 22 of the Constitution or with the intent to try the same person twice for the same offence; detention of a person ordered by an authority or official not empowered to detain him, or of a person protected under laws or decrees granting amnesty or free pardon; and any internment or deportation devoid of legal cause. The right to habeas corpus also extends to persons punished for certain offences defined in the administrative code if such punishment exceeds fifteen days of arrest or imprisonment or a fine of a specified amount (article 3).

350. The United Kingdom reports that in England habeas corpus proceedings are the most effective summary method of recovering personal freedom. The Government refers to the contribution on this question to the Yearbook on Human Rights for 1949.^{1/} In Scotland there are various ways by which the High Court of Judiciary or the Court of Criminal Appeal may review the justice of detention.

(ii) Persons protected

351. China reports that the right to challenge in court the lawfulness of an order of detention may be exercised by the injured party or by any other person (article 8 of the Constitution and article 1 of the Right to Trial by a Court).

352. In Denmark, article 71 (6) of the Constitution and Act No. 173 of 11 June 1954 recognize the right of the arrested person or any person acting on his behalf to request a judicial review of administrative deprivation of liberty.

353. In Nepal, under the Supreme Court Act of 1956, the directives, orders and writs which the Supreme Court is entitled to issue shall protect the rights of nationals and aliens.

354. In Panama, under Act No. 46 of 24 November 1956, habeas corpus proceedings may be initiated by the injured party or any other person without need of power of attorney (article 9). The other remedies referred to in section 2 (b) above are also available to any person.

^{1/} See pages 229-234.

(iii) Persons against whom proceedings may be initiated

355. China reports that the Constitution (article 8) seeks to protect the individual against detentions which are unlawfully ordered by "any organ". Article 1 of the Act on the Right to Trial by a Court deals with illegal arrest or detention by "any organ other than a court of law".

356. In Denmark, judicial control is exercised over deprivation of liberty ordered by the various branches and agencies of the Administration responsible for the matters enumerated in the summary under article 9.

357. In Panama the remedies established by Act No. 46 of 24 November 1956 may be sought against, and writs be addressed to, the public authorities or officials responsible for ordering the detention (article 16), or for issuing the order in violation of the rights set forth in article 51 of the Constitution (article 44).

358. In Pakistan the Constitution specifies (article 22(2)) that the directives, orders or writs which the Supreme Court is entitled to issue for the enforcement of constitutional rights may be directed to "any person or authority".

(iv) Rules of procedure^{1/}

359. In China, the Act of the Right to Trial by a Court lays down time-limits of twenty-four hours for the issuance of the writ after the court has found that the application is justified, and for the presentation of the arrested person to the courts upon receipt of the writ (articles 5 and 7). The court takes its decision after hearing the parties (article 8).

360. In Denmark, Act No. 173 of 11 June 1954 provides that cases should be submitted to the courts within five weekdays after a request for judicial control of administrative detention has been made.

361. A request may be made even though the confinement has ceased. The prisoner shall be present during the proceedings, unless the court decides otherwise in the light of the information available relating to his condition. Counsel shall be appointed unless the plaintiff expressly waives such right. The court decides on all questions concerning the examination of parties and witnesses, the calling of experts and the submission of other evidence.

^{1/} See also under article 10, Nepal, for a summary of the procedural guarantees provided by the Supreme Court Act of 1956.

362. In Panama, several provisions of Act No. 46 of 24 November 1956 lay down the procedures to be followed in respect of the remedies established therein. Provisions applicable to all remedies include in particular the definition of the grounds upon which judges should be disqualified (articles 37, 56 and 77); a small number of formalities as prerequisites of the admissibility of requests (articles 9 and 12, 46 and 48, 66 and 67); and rules concerning time-limits for the submission of reports by the defendant, the passing of the court decision and the notification thereof which tend to ensure the speedy examination of the cases (articles 14, 18, 27, 48, 49, 52-54, 69-71, 73-75); the shortest time-limits are provided for in respect of habeas corpus proceedings.

363. The following rules apply only in respect of habeas corpus proceedings: applications may be lodged at any time (article 11) and they shall be given priority over any other matters (article 7); they shall be decided upon without reference to any question of substantive law on which they may have a bearing (article 5); the writ is issued as soon as the application has been lodged in conformity with a few formalities and the addressee is obliged upon receipt to deliver the detained person immediately and to present a report (articles 9, 12, 16 and 18); the proceedings are conducted orally (article 5) except if the detention is the consequence of a judicial decision, in which case the application shall be decided upon on the basis of the relevant written documents (article 26). Habeas corpus proceedings are terminated as soon as the detained person has regained his physical freedom for whatever reason, but the injured party remains entitled to enter a criminal charge for arbitrary detention (article 8). A person who has been released under a writ of habeas corpus shall not be detained again in connexion with the same facts (article 30).

(v) Enforcement of court decisions on remedies

364. China reports that, in accordance with article 9 of the Act on the Right to Trial by a Court, any public officer who fails to comply with judicial orders in connexion with the writ provided in article 7 of the Act shall be liable to imprisonment, or to a fine.

365. In Nepal, the Supreme Court Act of 1956 provides that the decisions of that court shall be binding on all courts within the territory of Nepal and that all administrative and judicial authorities shall act in aid of the Supreme Court (articles 12 and 13).

366. In Panama, Act No. 46 of 22 November 1956 provides penalties of fines, or successive fines, without prejudice to further criminal proceedings, in case of failure to comply with court orders rendered in connexion with the remedy for the protection of the rights set forth in article 51 of the Constitution (article 59) and with the remedy of habeas corpus (articles 40 to 52). In addition, if the defendant in habeas corpus proceedings refuses to deliver the detained person and to make a report within the prescribed time-limit, he shall receive a further injunction; non-compliance therewith shall lead to his arrest (article 22).

(c) Right to compensation

367. China refers to article 24 of the Constitution under which any public official who illegally infringes upon the rights or freedoms of any person shall be held responsible under civil law; in addition the party aggrieved may ask the State for indemnity, in accordance with the law.

368. Denmark reports that the courts entitled to determine the lawfulness of administrative deprivation of liberty may at the same time grant compensation to the plaintiff.

369. France reports that anyone whose rights or interests have been violated as a result of an illegal act committed by a private person may claim damages before the courts (article 1382 of the civil code; article 3 of the code d'instruction criminelle). If such illegal act has been committed by administrative organs or agencies, compensation may be granted by the Administrative Courts.

370. Morocco states that if fundamental rights are violated by an individual who is not a public official, the plaintiff may seek redress before the courts in accordance with the general rules provided for by law. If such illegal act ("Voie de fait") has been performed or ordered by the public authorities, they shall be held personally responsible and may be sued for damages before the civil courts; the civil responsibility of the State, however, is not engaged.

371. In Nepal, article 17 (1) of the Civil Liberties Act of 1955 provides that any person who invades any right conferred by the Act or is accountable for such violation may be sued for damages before the competent courts.

372. Under Article 18 citizens are entitled to sue the Government inter alia for the enforcement of any rights arising in respect of any contract with the Government; the State shall not, however, be liable to pay damages for any tortious act of a government servant.

373. Articles 19 and 20 lay down rules of procedure concerning notices of suits and the time-limits for filing claims.

374. The United Kingdom states that any persons whose fundamental rights have been violated may institute proceedings before the civil courts asking for pecuniary damages. If the defendant has any resources he may be compelled to pay by execution, e.g. his goods may be seized and sold to satisfy a money claim.

(d) Criminal liability of persons violating fundamental rights

375. In China, article 24 of the Constitution provides that any public official who illegally infringes upon the rights or freedoms of any person shall be held responsible under criminal law, in addition to being subject to disciplinary measures in accordance with the law.

376. France mentions that every person whose rights have been injured through acts defined as criminal offences is entitled to make a complaint to the appropriate authorities and ask them to initiate criminal action ("action publique"). In such case, damages may also be claimed before the criminal courts (article 3 of the code d'instruction criminelle).

377. Hungary reports that in accordance with law No. 1946:X on the more effective protection of fundamental human rights, any civil servant who in exercising his official functions illegally violates the rights recognized in the preamble of the Constitution shall be guilty of felony and punished by up to five years' imprisonment.

378. Morocco states that anyone whose fundamental rights have been violated by private individuals may ask that appropriate proceedings be initiated before the criminal courts.

379. The United Kingdom mentions, among the remedies, proceedings before the criminal courts resulting in the conviction of the offender. In England prosecutions for criminal offences may, with certain exceptions, be instituted not only by the Police but by any member of the public. In Scotland criminal prosecutions are instituted by impartial public prosecutors, who may take action on a report from any source.

(e) Other remedies

380. Cambodia refers to the Constitution which provides (article 14) that every citizen has the right to address written petitions to the public authorities to bring about the examination of problems of individual or collective interest.

381. In Denmark, article 55 of the Constitution, implemented by Act No. 203 of 11 June 1954, provides for the appointment by Parliament of a Commissioner who shall supervise, on behalf of Parliament, the civil and military administration of the State; the Commissioner, acting upon complaints by individuals or on his own initiative, determines whether civil servants have committed faults or are guilty of negligence in the execution of their tasks, and reports his findings to Parliament. Any person deprived of his personal liberty may send a confidential complaint to the Commissioner (article 6 of the Act).

382. Sweden reports that the regulations in force in Sweden are in accord with article 13 of the European Convention for the Protection of Fundamental Rights and Freedoms which provides that everyone whose rights and freedoms are violated shall have an effective remedy, notwithstanding that such violation was committed by persons acting in an official capacity. Reference is made to the Swedish institution of parliamentary supervisory officials for civil and military affairs created for this purpose.
