



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/757/Add.2
7 February 1958
ENGLISH
ORIGINAL: ENGLISH/
FRENCH

COMMISSION ON HUMAN RIGHTS
Fourteenth session
Item 3 of the provisional agenda

PERIODIC REPORTS ON HUMAN RIGHTS

Summary Prepared by the Secretary-General

	<u>Paragraphs</u>
II. Summary on a Topical Basis (continued)	1-229
Article 16	1-53
" 17	54-83
" 18	84-123
" 19	124-159
" 20	160-180
" 21	181-229

ARTICLE 16

1. The following questions relating to article 16 were dealt with in the reports:
 1. Right to marry
 - (a) General
 - (b) Freedom to choose a spouse (Race, Nationality, Religion)
 - (c) Age of marriage
 - (d) Free and full consent of intending spouses
 - (e) Conditions governing the validity of the marriage
 2. Equal rights of men and women relating to marriage
 - (a) Rights and obligations of spouses
 - (b) Parental rights and duties of spouses
 - (c) Dissolution of marriage by annulment and divorce
 - (d) Distribution of property after dissolution of marriage
 3. Protection of the family by society and State

Developments during 1954-6

2. Four governments reported developments during the period under review: Austria (see para. 3); Ceylon (see para. 35); France (see paras. 16, 19); and Israel (see paras. 32, 36, 39, 50).

1. Right to marry

(a) General

3. Austria reports an agreement between Austria and Switzerland facilitating the issue of certificates of fitness for marriage and regulating the exchange of personal documents (BGBl. No.164/1954).^{1/}

4. France reports that the French Constitution (article 81) recognizes the existence of many different types of personal status for the population groups living in the Overseas Territories and in many respects these types of status reflect concepts very different from those underlying the law in Western countries and the Universal Declaration of Human Rights. The administrative authorities and the French legislators have tried to correct some of the abuses implicit in the traditional system. The principal texts in force are mentioned (see paras. 10, 17 to 19 below).

^{1/} See also under articles 1, 2 and 7 (E/CN.4/757, para.147)

5. The United Kingdom reports that marriages within certain degrees of relationship are prohibited (Marriage Act of 1949, s.1).

(b) Freedom to choose a spouse (Race, Religion, Nationality)

6. Finland reports that the law on marriage (No.234/1929) contains no provisions restricting the right to contract marriage on grounds of race, nationality or religion (articles 10-12).

7. France reports that men and women may marry whatever their race, nationality or religion.

8. The Philippines reports that under the Civil Code (Republic Act No.386) there is no limitation regarding marriage due to race, nationality or religion; freedom of religion must be observed in the issuance of authorization to solemnize marriage (article 93).

(c) Age of marriage

9. France states that under article 144 of the Civil Code any male of eighteen or over and any female of fifteen or over can contract marriage.

10. With regard to the Overseas Territories (French West Africa, French Equatorial Africa, Cameroons, Togoland), the Government mentions a Decree of 15 June 1939 declaring null and void the marriage of a girl who has not reached puberty and a Decree of 20 February 1946 adding that any marriage contracted in violation of that provision will be considered an act of enslavement (see paragraph 17).

11. Morocco reports that legislation which is being drafted provides that court permission must be obtained for marriages between parties whose ages are too disparate.

12. The Philippines reports that under the Civil Code any male of sixteen or above, or any female of fourteen or above, not under any legal impediments provided by law, may contract marriage (article 54).

13. The United Kingdom reports that the age at which marriage can be contracted is now sixteen for both girls and boys (Marriage Act of 1949). If under twenty-one, the consent of parents or of the court is required: absence of such consent does not make the marriage void. In Scotland the minimum age of marriage is sixteen and parental consent is not required.

(d) Free and full consent of the intending spouses

14. In China the Civil Code provides (article 972) that an agreement to marry shall be made by the male and female parties of their own accord.

15. France reports that article 146 of the Civil Code provides that there shall be no marriage without consent.

16. According to a court decision (Bordeaux, 21 December 1954 D.1955, 242) a mistake by one party as to the identity of his or her future spouse at the time the marriage is contracted may have the effect of voiding the marriage in the same way as would a mistake as to the person, if the said mistake renders invalid the consent of the person who was misled.

17. With regard to the Overseas Territories, the Government refers to a Decree of 15 June 1939 (see para. 10) declaring null and void the marriage without consent of a girl who has reached the age of puberty and prohibiting anyone who inherits a widow or other person under customary law from claiming the said widow or other person against her will. By a Decree of 20 February 1946 any marriage contracted in violation of these provisions will be considered an act of enslavement. A bill now being drafted is designed to make these interdicts more effective by reducing the penalties laid down in the Decree of 20 February 1946 which are at present too severe to be strictly applied.

18. A Decree of 14 September 1951 regulates the institution of the dowry which takes the form of payment by the prospective husband's family of a sum of money or contribution in kind on the occasion of the marriage. The maximum amount of the dowry that may be claimed is determined by the administrative authorities. The husband is authorized to undertake before the registrar not to contract a second union (article 5 of the Decree), thus committing himself to monogamy.

19. The Government states that, in time, the principles enshrined in the legislation will be absorbed into the people's customs as a result of the spontaneous evolution of those customs from within. The decrees enacted in application of the loi-cadre of 23 June 1956 entrust the local political assemblies with the task of codifying customs and of guiding and sanctioning their evolution.

20. Norway states that the stipulation that marriage shall be entered into only on the basis of the parties' own free will is in keeping with a very old Norwegian legal-social tradition.

21. The Philippines reports that the consent, freely given, of the contracting parties is an essential requisite of marriage (Art.53, Civil Code). If such consent is obtained by fraud, force or intimidation, or either party is of unsound mind, the marriage is annulable or voidable (Art.85).

22. The United Kingdom reports that a marriage contracted under a mistake as to identity or without real consent to the assumption of the status is void ab initio. In Scotland free and full consent by both parties is an essential element of marriage.

(e) Conditions governing the validity of the marriage

23. China reports that under the Act governing the Conflict of Laws in Civil Cases (article 11), the legal requirements for marriage shall be determined according to the national law of each of the parties. The matrimonial ceremony shall be valid if held in accordance with the national law of either of the parties or in accordance with the lex loci celebrationis.

24. Finland reports that an alien's right to contract marriage is determined by the legislation of his country of origin (Act No. 379/1929 on certain relationships in the sphere of family law having international implications, article 1).

25. France states that the marriage of an alien temporarily resident in France (i.e. a person holding a residence permit valid for less than one year) may be celebrated by a French registrar only on authorization of the prefect of the department in which the person concerned has his place of residence (article 13 of the Aliens Ordinance of 2 November 1945).

26. Morocco reports that the marriage of aliens is regulated in accordance with the law of their personal status, and Moroccan courts apply the foreign law in such a way that their decisions produce an extra-territorial effect. Conflicts of law are generally considered in a spirit of compromise and mutual respect for the concepts adopted by each legislator. Nevertheless the court must find the best solution to the conflict by the determination of which is the eminent law, such determination being deduced from a knowledge of the juridical

/...

nature of the legal relationship involved; this does not necessarily compel the court to accept the easy solution of the lex fori, to which recourse will be had only if the positive interest of the solution makes it necessary in the interests of equity.

27. The Philippines states that marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices, for a period of twenty years from the approval of the Civil Code, unless the period is shortened by the President of the Philippines (article 78).

28. The United Kingdom reports the formalities for contracting marriage are contained in the Marriage Act, 1949. All marriages are registered by the State, but it recognizes for this purpose certain religious ceremonies; a civil ceremony is optional in such cases. In Scotland the most important Acts are the Marriage Notice (Scotland) Act, 1878, and the Marriage (Scotland) Act, 1939. The law in Scotland is different in many particulars, but the main principles are similar.

2. Equal rights of men and women relating to marriage

(a) Rights and obligations of spouses

29. China reports that in daily household matters the husband and the wife act as agents for each other. If either of the parties abuses the right of agency, the other party may restrict it (Civil Code, art.1003).

30. Finland states that according to the Marriage Act (No. 234/1929) the husband and wife are on a footing of complete equality. In the case of marriages contracted before the entry into force of the said act, the husband is still the legal agent for his wife for certain purposes (article 3 of the Act on the entry into force of the Marriage Act).

31. France states that the respective rights of spouses in respect of property depend on the matrimonial regime freely adopted by them (article 1387 of the Civil Code). In the absence of a marriage contract the spouses are subject to the regime of legal community of property (article 1400 of the Civil Code), under which the husband alone administers the joint estate (article 1421 of the Civil Code).

/...

32. Israel reports the enactment, in July 1956, of the Names Law (5716-1956, Sefer Ha-Hukim 207, p.94), the first part of a Code on the Law of Persons and Families, under which a woman obtains her husband's name upon marriage, but may, at any time, add to it her pre-marital name, or, upon marriage or at any time thereafter, retain her pre-marital name only (Sect.6). Husband and wife may not change their family name except by mutual consent.

33. Morocco reports that the marriage of Moroccans is regulated in accordance with the law of their personal status which, generally speaking, grants the same rights to the man and the woman. Where the laws or customs permit a certain inequality between the spouses, the legislation now being prepared tends in all cases to eliminate it.

34. The United Kingdom reports that in English law there is no conception of community of property between spouses and consequently no provision for their equal rights in property. Developments culminating in the Married Women's Property Act of 1882 resulted in a woman no longer losing her independent proprietary capacity on marriage; she can retain in her own name anything she owns on marriage, or later acquires. During marriage the husband is bound to support his wife provided that she has not disentitled herself by committing some matrimonial offence. In Scotland the right of a married woman to separate property was established by a series of enactments ending with the Married Woman's Property (Scotland) Act, 1920.

(b) Parental rights and duties^{1/}

35. Ceylon reports a decision of the Privy Council of 1956, Martha Ivaldy vs. F.P. Ivaldy et al. (reported in 57 New Law Reports, p.568), which held, that, under the Roman-Dutch Law, where there has been no legal dissolution of the common home, the father's right to the custody of his minor children remains unaffected by the fact of the separation of the spouses, and can only be interfered with on special grounds, such, for example, as danger to the life, health or morals of the children.

36. Israel reports on the Names Law of July 1956 (5716-1956) under which a child born in wedlock obtains his father's name unless the parents had agreed that he should receive the name of the mother. A child born to a mother who is the reputed (though not the legal) wife of his father, is not, for the

^{1/} See also under Protection of the family by society and State

purpose of this law, considered born out of wedlock. The child is given a private name by both his parents. Failing agreement between them, each of them may give him a private name.

(c) Dissolution of marriage by annulment and divorce (Grounds and Effects)

37. China reports that husband and wife may effect a divorce by mutual consent (article 1049 of the Civil Code), and either spouse may apply to the court for a divorce on the ground that the other spouse has committed bigamy, or adultery or that it is impossible to live together owing to the cruelty of the other party (article 1052 of the Civil Code). Any person who by fraudulent means enters into a void or voidable marriage which is subsequently declared void or annulled by a judicial decision shall be liable to imprisonment for a term of not more than three years (article 238 of the Criminal Code).

38. France reports that the husband and wife are on a footing of equality in respect of the right to seek divorce (articles 229 to 232 of the Civil Code) or legal separation (article 306 of the Civil Code).

39. Israel reports that under the Names Law of July 1956 a woman may, upon dissolution of the marriage, either retain her husband's name or abandon it, as she chooses.

40. Morocco states that in the case of Moslem nationals, marriage and divorce are governed by the chari'a, the law of personal status, which is applied, according to the Malekite rite by the cadis' courts in the Moroccan judicial system.

41. Aliens are governed by the law of personal status, as the Moslem law regards marriage as a religious act. Thus the jurisprudence of the courts allows Spaniards, Italians or Portuguese, for instance, to settle their actions de divorcio according to the religious law applied by the Ecclesiastical Court. The ordinary courts recognize and retain jurisdiction only in so far as the civil consequences of such marriages are concerned (alimony, custody of children etc.). In the case of an alien whose status does not require him to obtain the approval of the religious authorities, the courts apply the lay provisions of his national law.

42. The Philippines reports that divorce among Moslems residing in non-Christian provinces is recognized and governed by Moslem customs and practices

/...

for a period of twenty years from the date of the approval on June 17, 1949 of the Republic Act, No.394. Absolute divorce among non-Moslems is not recognized by the Civil Code.

43. The United Kingdom reports that when divorce first became part of the general law in 1857, the grounds were not the same for the two sexes, but the distinction was removed in 1923 and now the grounds are identical for either party, except that the wife can also petition on the ground that the husband has committed one of three heinous sexual crimes (Matrimonial Causes Act 1950, s.1). In Scotland, the grounds for dissolution or annulment derive from the common law and from the Divorce (Scotland) Act, 1938. Grounds for divorce are the same for either party. The main principles of the law are similar to the law of England and Wales.

(d) Distribution of Property after dissolution of marriage

44. France reports that on the dissolution of a marriage, the property in the joint estate is equally divided between the husband and the wife (article 1474 of the Civil Code).

45. The United Kingdom reports that when the marriage is dissolved, each party takes what belongs to him or her. The wife's own resources are taken into account for the purposes of any order made by the court for her maintenance. In Scotland, on divorce, the innocent party may not claim maintenance, but, with one minor exception, he or she may claim his or her legal rights over the property of the guilty party as if the latter were dead.

46. In England on intestacy (death without a valid will) the spouse and children of the deceased have priority, and no one can share in his estate who is more remote than grandparents or their descendants (Administration of Estates Act, 1925, s.46, as amended by Intestates Estates Act, 1952). So far as concerns testamentary successions in England, the court has power to make reasonable provision for a wife or husband for whom this had not been made in the will of the spouse (Inheritance (Family Provisions) Act, 1938). Provision may also be made in favour of minors or disabled sons and unmarried or disabled daughters.

3. Protection of the family by society and State^{1/}

47. China reports that a section of the Criminal Code is devoted to the protection of the family, and cites as an example the provision making it an offence to induce a person under twenty to run away from his or her family or from the person having supervisory authority over him or her; or a married person to desert his or her family (article 240).

48. France reports that in the Overseas Territories the administrative authorities can call on the assistance of the social welfare workers, one of whose tasks is to help married women or girls by visiting their homes or attending the social centres. In this way the welfare workers have an opportunity to explain the laws to the women concerned and, in their role as advisors, they play their part in applying the regulations based on article 16 of the Universal Declaration.

49. In Hungary article 51 of the Constitution provides that the Republic protects the institution of marriage and the family.

50. The Philippines reports that the family is a basic social institution which public policy cherishes and protects (Civil Code, article 216). The law governs family relations, and no custom, practice or agreement which is destructive of the family shall be recognized or given any effect (article 218). Judicial and administrative officials are enjoined to foster mutual assistance, both moral and material, among members of the same family (article 219). Suits or litigations between members of the same family are discouraged (article 222), and in case of doubt, all presumptions favour the solidarity of the family (article 220).

51. The Civil Code also provides for the protection of the family home, which if constituted as provided therein, whether judicially or extra-judicially, is generally exempt from execution, forced sale, or attachment (articles 223-251). Legal recognition is likewise given to the role of the family council, as an advisory body on important family questions, by providing for its appointment by the Court of First Instance upon application of a member of the family, a relative or friend (articles 252-254, Civil Code).

^{1/} See also under Articles 22 and 25 (E/CN.4/757/Add.3, paras.35-62).

52. The United Kingdom reports that a defined status is conferred in only a very limited number of human relationships, of which the status of marriage is one. A contract between husband and wife will, on the ground of public interest, be disregarded by a court of law if it conflicts with the mutual obligations arising from the status of marriage (Bennett v. Bennett (1952) 2 A.E. 12.413; Lang v. Lang 1921 s.c.44).

53. The Government cites the following as examples of provisions designed to strengthen marriage and family ties and to maintain the integrity of the family as a social unit. Communications between husband and wife are, in English law, absolutely privileged against disclosure, i.e. neither spouse can be compelled to disclose them. The co-respondent in divorce proceedings may have to pay damages for breaking up a home. Members of a family can bring an action for their loss in the death of a breadwinner (Fatal Accidents Acts, 1846-1908; in Scotland common law). Except with the consent of the parents, children and young persons under the age of seventeen years can only be removed from the home as a result of the order of a court (Children and Young Persons Act, 1933, Part III). Parents can recover the custody of their children from the hands of unauthorized strangers, in England by habeas corpus proceedings or by petition in the High Court (Re Agar-Ellis 24 Ch. D. 317), in Scotland by obtaining from the court an order for the delivery of the child.

ARTICLE 17

54. The following questions relating to Article 17 were dealt with in the reports:

1. The right to own property
 - (a) Recognition of the right to property
 - (b) The right of aliens to acquire, own or possess property
2. Protection of the right to property
 - (a) Inviolability of property
 - (b) Expropriation of private property
 - (c) Compensation for, restitution and restoration of property commandeered or nationalized
3. Treaty provisions concerning property rights

Developments during 1954-56

55. Four governments reported developments during the period under review. Austria (See paras. 63, 80 and 83); Nepal (See paras. 70 and 81); the Philippines (See para. 61); the United Kingdom (See para. 79).

1. The right to own property
 - (a) Recognition of the right to property

56. China reports that the right to own property is recognized by the Civil Code which, in the Book on Rights over Things, contains two sections on the protection of co-ownership and possession.

57. In Finland the Constitution provides that every Finnish citizen shall be protected by law as to his property.

58. France states that the right to property defined in article 544 of the Civil Code is recognized both in the case of individuals (article 537 of the Civil Code) and in that of civil companies (cassation, Chamber of Appeals, 23 February 1891, D 1891, - 1 - 337) and trading companies. Associations registered with the public authorities can also avail themselves of this right subject to certain restrictions almost all of which are waived if the associations in question are recognized to be in the public interest (articles 5, 6 and 11 of the Act of 1 July 1901). Trade unions have the right to acquire real or personal property without any special authorization (Labour Code, Book III,

/...

article 10). In the Overseas Territories the provisions of the Civil Code concerning property apply automatically to French citizens having "ordinary law status" (statut de droit commun), and citizens having "local law status" (statut de droit local) may invoke them if they so wish in a particular case. Special rules (the land registration system) are in force for real property because of the system of collective ownership which still obtains in several areas.

59. The United Kingdom reports that the law respects the right of everyone to own property, either alone or in association with others.

(b) The right of aliens to acquire, own or possess property

60. Finland reports that no alien may acquire real property in Finland or possess it for more than five years on a lease or other contract without special authorization from the Council of Ministers in each case (Act No. 219/1939 on the right of aliens and certain communities to own or possess immovable property and shares, article 1, paragraph 1). An alien is not entitled to possess shares in a company, unless a proviso to that effect was made by the Council of Ministers on the grounds of public interest when the statutes of the company were approved (article 3); in such case he is entitled to hold only a specified percentage of the shares. An alien is not entitled, save by special authorization of the Council of Ministers in each case, to occupy mineral deposits in Finland or to purchase or exploit deposits already occupied (Act No. 273-1943 on mines, article 1) nor may he own a share in a Finnish vessel (Maritime Navigation Act No. 167/1939, article 38).

61. The Philippines refers to provisions of the Constitution limiting the disposition, exploitation, development or utilization of natural resources of the Philippines and the operation of public utilities to Filipino citizens or to corporations or associations at least 60 per cent of the capital of which is owned by such citizens (Art. XIII, Sec. 1 and Art. XIV, Sec. 2). Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations or associations qualified to acquire or hold lands of the public domain (Art. XIII, Sec. 5). Decisions of the Supreme Court are cited holding that residential and

/...

commercial lands cannot be sold to aliens (Krivenko v. Register of Deeds, 44 O.G.471) and that the acquisition of agricultural land by an alien who becomes a Filipino citizen after the sale and before the property is escheated in favour of the State is valid (Vasquez v. Li Seng Giap, G.R. No. L-5670, 31 January 1955).

62. Sweden states that the right of aliens to acquire real property is restricted by Swedish law.

2. Protection of the right to property

(a) Inviolability of property

63. Austria reports a federal Act (BGBl. No. 133/1954) amending the Dwellings Requisitioning Act and removing certain restrictions resulting from the control of dwellings. Federal Act BGBl. No. 101/1955 extends the validity of the Dwellings Requisitioning Act until 31 December 1955. A decision of the Constitutional Court of 24 June 1954, B16,17/54 is cited holding that the right to inviolability of property is enjoyed in full measure by aliens, subject only to the condition that it may be expropriated in accordance with the provision of law. In a decision of 7 December 1954, B161/1954, the Court held that Austrian law guarantees the freedom of the property owner in the exercise of his rights, with the sole proviso that he may not in the exercise of those rights infringe the rights of others or violate the restrictions for the maintenance and furtherance of the general good.

64. In Cambodia Article 7 of the Constitution provides that property shall be protected by law.

65. China cited Articles 765 and 767 of the Civil Code concerning the right of the owner of a thing, within the limits of the law, to use it, receive its benefits and dispose of it and his right to recover it if wrongfully deprived of its possession or to protect his ownership against impairment. Additional protection of private property is provided in the Criminal Code which deals with such offences as grand and petty larceny, fraud, embezzlement and breach of confidence.

66. In Denmark, the Constitution of 1953 provides that the right of property shall be inviolable (Art. 73, para. 1).

67. Finland reports that chapters 28-33 of the Penal Code contain provisions concerning offences regarding property.

68. France refers to article 545 of the Civil Code according to which no one can be compelled to dispose of his property save for public use and in return for just compensation, paid in advance. In the Overseas Territories the Administration makes every effort to ensure that the retention of the customary rules does not result in the misappropriation of property by influential persons.

69. Morocco states that community property is protected by the dahirs of 27 April 1919, 19 October 1937, 14 August 1945 and 19 March 1951 which give the administration authority to supervise the communities managing the property and lay down strict conditions for the alienation of community property. A dahir of 7 February 1953 cancelling and superseding the dahir of 8 February 1945 established an inalienable Moroccan patrimony. A dahir of 12 August 1913 providing for the registration of private property ("melk" property) was designed to verify and secure individual land titles.

70. In Nepal, the Civil Liberties Act of 1955 guarantees that no citizen shall be deprived of his property, save by authority of the law (Art. 9).

71. In the Philippines, the Constitution guarantees in its Bill of Rights that no person shall be deprived of property without due process of law (Art. III, Sec. 1, cl. 1).

(b) Expropriation of private property

72. In Cambodia the Constitution (Article 7) prescribes that no one may be deprived of his property save in the public interest or in cases provided for by law and subject to the previous payment of an equitable compensation.

73. In Denmark, the Constitution of 1953 provides (Article 73) that no person may be required to cede his property except when required by the public weal. This can be done only as provided by statute and against full compensation. The legality of acts of expropriation and the determination of the amount of compensation are subject to judicial review. Provision is also made whereby a bill relating to expropriation of property may, upon demand by one-third of the members of the Folketing, not be presented for royal assent until after new elections of the Folketing are held and the bill is again passed by it.

74. Finland reports that the Government Form provides that expropriation for consideration of public need and in return for full compensation is governed by law. When a compulsory measure involving the transfer of a property right to another person has any real economic significance, that measure can be taken only if it has been authorized by an act promulgated in the manner laid down for constitutional enactments. Generally speaking property is subject to the same guarantees as life, honour and personal freedom (Act of 14 July 1898 on the expropriation of real property for public need, Act No. 169/1928 on the expropriation of real property for the use of electric power stations and Act No. 787/1944 on expropriation in the interests of national defence).

75. France refers to the Decrees of 8 August and 30 October 1935 whereby compensation for expropriation is determined by a commission composed of an equal number of private property owners and representatives of the Administration; the commission's decisions can be appealed before the courts.

76. Morocco states that the system of expropriation for public use and the laws relating to the requisitioning of land restrict the right of individual or collective ownership. On the other hand, the expropriation can be ordered only by the courts and providing that the public use has been declared by dahir or decree (dahir of 3 April 1951). The right of requisition is also regulated by the dahirs of 10 August 1915, 25 March 1918 and 13 September 1938. It can be invoked only in exceptional circumstances and compensation is provided in all cases.

77. In Norway, the Constitution requires that full compensation from the public treasury be paid to the owner if the welfare of the State requires that he relinquish his movable or immovable property for the public use (Art. 105). This provision applies in similar manner when relinquishment is in favour of a private party - the latter, in such case, paying the compensation.

78. In the Philippines, private property may not be taken for public use without just compensation (Art. III, Sec. 1, cl. 2, Constitution). Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and sold at cost to individuals (Art. XIII, Sec. 4). The State may, in the interest of national welfare and defence and upon payment of just compensation, transfer to public ownership utilities and

/...

other private enterprises to be operated by the Government (Art. XIII, Sec. 6). The Civil Code reaffirms the constitutional right to just compensation in case of expropriation of private property (Art. 435) and renders liable to an action for damages any public officer or employee who violates such right (Art. 32).

79. The United Kingdom states that an owner cannot be deprived of his property except for consideration of public need as defined by law. Private lands (including buildings and fixed equipment) may be acquired under statutory powers for public purposes, especially housing, health, education, highways, defence, postal and telephone services, etc. The procedure for compulsory acquisition of land is prescribed by law, which in nearly all cases, provides the owner an opportunity to be heard at a public or private local inquiry into the justification of the compulsory purchase order. The basis of compensation is provided by statute (Lands Clauses Act, 1845, the Town and Country Planning Acts of 1947 and 1954 (and the corresponding Scottish Acts) and the Acquisition of Land (Assessment of Compensation) Act, 1919). In case of disagreement on the amount of compensation between the owner and the purchasing authority, either party has a right of appeal to the Lands Tribunal which is an independent body of lawyers and valuers. Its decision on a question of valuation is final, but on a question of law, recourse may be had to the Court of Appeals and, in certain cases, to the House of Lords.

(c) Compensation for, restitution and restoration of property commandeered or nationalized

80. Austria refers to laws concerning restitution of the property of bodies corporate dissolved during the National Socialist occupation (BGBl. No. 23/1954); restoration of charitable institutions and foundations to their corporate status if they were dissolved between 13 March 1938 and 27 April 1945 by order of the authorities in connexion with the National Socialist seizure of power (BGBl. No. 197/1954); compensation for the former joint owners of assets nationalized under the Nationalization Act (BGBl. Nos. 168/1954, 189/1954, 115/1955, 116/1955 and 166/1955); and compensation of persons whose material possessions were commandeered by the former occupation Powers in Austria (BGBl. No. 53/1955).

81. In Nepal, the Civil Liberties Act of 1955 provides (Article 18) that a citizen shall be entitled to file suit against the Government for recovery of any property or money for damages in respect of any property taken from him by the Government in contravention of Section 8 or 9, or for the enforcement of any right arising in respect of any contract with the Government unless the contract provides for the decision of dispute by some other authority; provided that the Government shall not be liable to pay damages for any tortious Act of a Government servant.

82. The United Kingdom reports on the nationalization of certain industries effected under specific acts of Parliament (e.g. Coal Industry Nationalization Act, 1946; Coal Industry (No. 2) Act, 1949; Electricity Act, 1947; Transport Acts, 1947 and 1953; Gas Act, 1948; Iron and Steel Acts, 1949 and 1953). Where a nationalization Act has provided for compulsory vesting in the new nationalized authority of privately-owned securities or other assets, the Act has also provided for fair and equitable compensation and a procedure for determining disputes by independent arbitration.

3. Treaty provisions concerning property rights

83. Austria cites provisions of the State Treaty (BGBl. No. 152/1955) concerning waiver of property claims against Germany, the Allies (in so far as such claims relate to compensation for damage resulting from Allied action) and Yugoslavia, and the transfer of "former German assets" to the ownership of Austria. The Government states that the basic principle of protection of property receives recognition in Articles 24 to 26 of the Treaty. To give effect to Article 26, a Federal Act (BGBl. 269/1955) and an Ordinance (BGBl. 287/1955) were enacted, which included provisions on the application of that article to ecclesiastical property rights.

ARTICLE 18

84. The following questions relating to article 18 have been dealt with in the reports:

1. Freedom of thought, conscience and religion (basic principle).
2. Freedom to maintain or to change religion or belief.
3. Freedom to manifest religion or belief:
 - (a) Practice, worship and observance;
 - (b) Conscientious objection;
 - (c) Teaching.
4. Relation between State and Church.

Developments during 1954-6

85. Seven Governments reported developments during the period under review:

Australia (see para. 107); Austria (see paras. 99, 108); Ceylon (see para. 87); Israel (see para. 109); Nepal (see para. 118); Norway (see para. 91); Pakistan (see paras. 92, 112, 120).

1. Freedom of thought, conscience and religion (basic principles)

86. In Cambodia article 8 of the Constitution provides that freedom of conscience shall be absolute.

87. In Ceylon the Constitution prohibits the enactment of any law restricting the free exercise of any religion, or discriminating against, or granting privileges to persons who belong to certain religious denominations (section 29 (2)). The Ceylon (Constitution) Amendment Act No. 29 of 1954 specifies that this provision does not apply to any law relating to the election to Parliament of persons registered as citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act No. 3 of 1949.^{1/}

88. In Finland, article 8 of the Constitution and Law No. 269/1922 on freedom of religion recognize the right of citizens to freedom of religion, including freedom of conscience, freedom of worship and the right to establish religious communities, provided they do not violate law or good morals.

^{1/} See under article 21, para. 196.

89. France reports that freedom of thought, conscience and religion are traditionally recognized in the metropolitan country and the Overseas Territories, and that they are safeguarded by the Act of 9 December 1905 on the separation of Church and State.

90. In Hungary the Constitution provides that the Republic safeguards the liberty of conscience of all citizens (paragraph 54).

91. Norway reports that the constitutional provision that Jesuits shall not be tolerated, which was the only major remaining limitation on freedom of religion, was annulled by the Constitutional amendment of 1 November 1956.

92. In Pakistan the Constitution of 1956 provides (article 18(a)) that, subject to law, public order, and morality, every citizen has the right to profess, practice and propagate any religion.

93. In the Philippines the Constitution provides (article XIII, section 1, clause 7) that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise or enjoyment of religious profession and worship, without discrimination, shall forever be allowed.

94. The United Kingdom reports that there is no impediment to freedom of thought, conscience and religion.^{1/}

2. Freedom to maintain or to change religion or belief

95. Finland reports that, under the Constitution and Law No. 269/1922 on freedom of religion, every citizen shall be at liberty to belong to the religious community of his choice and to leave the religious community to which he belongs.

96. Morocco states that Islam does not allow for a change in religion; however, the law provides no penalty for abandonment of the faith.

97. Sweden refers to Act No. 680 of 26 October 1951 which provides that no one shall be compelled to belong to a religious denomination (article 4) and that any person may withdraw from the State church after complying with certain formalities (articles 6 to 12). Before the enactment of that law, secessions from the State church were permitted only if the persons concerned joined another Christian denomination.

^{1/} Reference is made to the Report submitted to the Special Rapporteur for the Study on Discrimination in Education.

98. The United Kingdom reports that there is no restriction upon a man's freedom to change his religion.

3. Freedom to manifest religion or belief

(a) Practice, worship and observance

99. In Austria article 6 of the State Treaty for the re-establishment of an independent and democratic Austria of 15 May 1955 (BGBl. No. 152/1955) provides that Austria shall take all measures to secure freedom of religious worship to all persons under its jurisdiction. Article 36, paragraph 5 of the military service Act (BGBl. No. 181/1955) provides that no restriction shall be placed on the religious observances of members of the armed forces.

100. In Cambodia the Constitution provides that freedom of worship shall not be subject to any other restrictions than those which are necessary to maintain public order (article 8).

101. France states that it guarantees freedom of religious worship, subject only to the restrictions issued in the interest of public order (Act of 9 December 1905 on the separation of Church and State).

102. In Hungary the Constitution provides that the Republic safeguards the freedom of religious worship of all citizens (paragraph 54).

103. Morocco reports that the practice of every faith is protected by articles 167 and 168 of the Penal Code.

104. The Philippines refers to provisions of the Revised Penal Code (articles 132 and 133) and of the Civil Code (article 32) which prohibit the disturbance of any religious ceremonies and the performance of acts offensive to religious feelings in any place of worship or during the celebration of any religious ceremonies.

105. In accordance with article 93 of the Civil Code, freedom of religion shall be observed by public officials in the issuance of authorization to solemnize marriage; consequently no public official shall attempt to inquire into the truth of any religious doctrine held by the applicant. The performance of acts which create a clear and present danger to public peace, public order, public safety, or public morals cannot be justified on the ground that they were done in accordance with one's religious beliefs. This principle has been applied with regard to medical practice illegally performed by a person who pretended to possess special grace from his faith (People v. Diel (44 O.G.590)).

/...

106. Sweden refers to Act No. 680 concerning freedom of religion of 26 October 1951 which provides that public religious services shall be subject only to such restrictions as generally apply to public meetings (article 3).

(b) Conscientious objection

107. Australia refers to a 1954 decision of the Industrial Commission of New South Wales concerning exemption from compulsory unionism on the ground of conscientious belief. The decision states inter alia that the public authorities, when examining requests for exemption shall not pronounce upon the truth or falsity of the belief invoked and shall grant the request if they are satisfied that such belief is genuine.

108. Austria refers to the Military Service Act (EGBl. No. 181/1955) which provides that persons may, on the grounds of genuine religious beliefs, be exempted from service involving the use of weapon (article 25).

109. Israel refers to a judicial decision rendered in 1956 stating that, while any person is free to hold opinions, including religious beliefs, without interference, no opinion or belief may justify disobedience to the law; the case in question concerned a person who objected to military service on religious grounds (Menahem Mendel Cohen v. Attorney General, 4 March 1956, Supreme Court sitting as Court of Criminal Appeal, 10 Piskei Din 452 (1956)).

(c) Teaching

110. France reports that in some overseas territories, subsidies may be granted to religious denominations for the purpose of promoting the educational activities of the various religious missions, which have been organized, for all the overseas territories, under the decrees of 16 January and 6 December 1939, and the decrees of 3 July 1945 (Togoland) and 28 February 1926 (Cameroons). The missions are endowed with legal status and may establish administrative boards to represent them in civilian life. The system is more liberal than that provided by law in the metropolitan country (Title III of the Act of 1 July 1901).

111. Morocco reports that the Koran is taught in all Moslem educational institutions. Other religions (Jewish, Christian) are freely taught by the ministers of the various faiths.

112. In Pakistan article 13 of the Constitution of 1956 provides that no religious community or denomination shall be prevented from giving religious instruction to pupils of that community or denomination in any educational institution maintained wholly by that community or denomination.

113. Sweden reports that children may not be dispensed from taking part in divinity lessons, unless they belong to a faith which is not that of the Swedish Church and satisfactory religious tuition is otherwise arranged.

4. Relation between State and Church

114. In Cambodia article 8 of the Constitution provides that the State religion is Buddhism.

115. Finland reports that under Law No. 267/1922 on freedom of religion, the leadership of a religious community shall consist, in the main, of Finnish citizens. However, when the majority of the members of the community consists of aliens, the Council of Ministers may allow an exception to be made to this rule.

116. France refers to the Act of 9 December 1905 on the separation of Church and State, also applicable to Madagascar (Decree of 11 March 1913) and to the Cameroons (Decree of 28 March 1933), which prohibits local governments, in the interest of maintaining equality, from granting budget subsidies to the various denominations. Under article 8 of the Decree of 11 March 1913 on the practice of religion in Madagascar, the State buildings used for public worship shall continue to be set aside for the use of the communities which requested permission to practise their faith provided they abide by the general organizational rules of the faith the practice of which they wish to safeguard. The Government refers to a State Council Order on the application of this principle (19 December 1952, Penant 1953, p. 117).

117. In Hungary the Constitution provides that in order to ensure liberty of conscience the Republic separates the Church from the State (paragraph 54 (2)).

118. In Nepal article 7 of the Civil Liberties Act of 1955 provides that, subject to the existing law, every religious denomination or section thereof shall have the right to maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion and social intercourse, to own property and to administer it in accordance with the law.

119. Norway reports that under the Constitution of 1814 (article 2) the Evangelical Lutheran religion shall remain the religion of the State.

120. Pakistan reports that subject to law, public order and morality, every religious denomination has the right to establish, maintain and manage its religious or educational institutions (Constitution, article 18). There shall be no discrimination against any such community in the granting of tax exemptions (Constitution, article 13) and no person shall be compelled to pay special taxes for the propagation or maintenance of any religion other than his own (Constitution, article 21).

121. The Philippines reports that, in accordance with the Constitutional principle of separation of Church and State, no public funds may be used for the benefit of any church or religious institution, or support of any religious minister or teacher, except when they are assigned to the armed forces, to penal institutions or to certain welfare establishments (Constitution, article VI, section 23, cl. 3). On the other hand, the courts have held that tax exemptions for properties devoted exclusively to religious purposes, optional religious instructions in public schools, and the use of public buildings for meetings of leaders of religious sects are permitted under the Constitution (Aglipay v. Ruiz 64 Phil 201; People v. Fernandez, GA-CR No. 1128-R).

122. Sweden reports that the Evangelical Lutheran Church of Sweden enjoys the status of State Church and its ministers act as public officials in various fields such as the keeping of vital statistics and legal residence records and the performance of marriage ceremonies (although marriage in other churches and civil marriages are permitted). Article 2 of Act No. 680 concerning freedom of religion (1951) provides that everyone shall be free to meet with and join other persons for purposes of religious fellowship. The ban on the establishment of Catholic cloisters has been lifted but under article 5 of this Act, a monastery or convent may be established only with the consent of the King and subject to such conditions as he prescribes.

123. The United Kingdom reports that the established churches of England and Scotland retain some marks of their previous legal superiority, which do not, however, seriously impair the principles of religious freedom and equality. Any religious denomination may establish institutions and bodies, without discrimination, subject to general limitations in the interest of public order and decency.

/...

ARTICLE 19^{1/}

124. The following questions relating to article 19 have been dealt with in the reports:

1. Right to freedom of opinion and expression.
2. Rules governing the establishment of information enterprises.
3. Restrictions placed on the right to freedom of opinion and expression:
 - (a) Basic principles;
 - (b) Prior restraints;
 - (c) Penal sanctions;
 - (i) Protection by penal law of public order, security, maintenance of international peace, religion and morality;
 - (ii) Protection by penal law of the honour and the reputation of others;^{2/}
 - (iii) Protection of the proper administration of justice.^{3/}

Developments during 1954-6

125. Six Governments reported developments during the period under review: Australia (see paras. 138, 158); Austria (see para. 126); Brazil (see paras. 132, 133, 147, 155); Cambodia (see para. 139); Nepal (see para. 126); Pakistan (see paras. 126, 135).

1. Right to freedom of opinion and expression

126. The following Governments report in general terms that freedom of opinion and expression, sometimes with special reference to freedom of speech and publication, are provided for in Treaties, Constitutions or other basic texts, subject to restrictions, if any, which are therein defined: Austria (articles 6 and 7 of the State Treaty for the Re-establishment of an Independent and Democratic Austria of 15 May 1955); Brazil (article 1 of Act No. 2083 of 12 November 1953); Cambodia (article 9 of the Constitution); Denmark (article 77 of the Constitution); Finland (article 10 of the Constitution; Act No. 10/1919 of 4 January 1919); Hungary (para. 55(1) of the

^{1/} See also E/CN.4/758/Add.2 (Report of UNESCO; and E/2681 (Report of the ITU)).

^{2/} See also under article 12.

^{3/} See also under articles 10 and 11.

Constitution ensuring these rights "in the interest of the workers"); Nepal (article 6 of the Civil Liberties Act of 1955); Norway (Section 100 of the Constitution); Pakistan (article 8 of the Constitution of 1956); The Philippines (article III, Section 1, clause 8 of the Constitution).

127. Sweden reports that Swedish legislation on freedom of the press is in harmony with the definition of freedom of expression given in article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

128. The United Kingdom states that freedom of opinion and expression is secured not by any positive provision of law but by the absence (subject to a few exceptions) of legal powers to restrain them.

2. Rules governing the establishment of information enterprises

129. In Hungary paragraph 55(2) of the Constitution stipulates that the State must provide to the workers the material resources required to implement the right to freedom of speech and of the press.

130. Morocco reports that the publication of newspapers and periodicals is free provided prior notice thereof is given to the Government and copies of the publications are deposited with the public authorities; a responsible "gérant" must be appointed by the publishers, who must pay a small sum as "cautionnement" (Dahir of 27 April 1914).

131. The United Kingdom reports that radio stations or apparatus may be set up only by licence of the Postmaster General (Wireless Telegraphy Act, 1949). Licensing of newspapers came to an end in 1695.

3. Restrictions placed on the exercise of the right to freedom of opinion and expression

(a) Basic Principles

132. Brazil refers to Act NO. 2083 of 12 November 1953 which defines press offences (articles 9 to 12), and lays down the rules of procedure governing their prosecution. The rule concerning the statutory period of limitation was amended by Act No. 2728 of 16 February 1956 to provide that the right to lodge a complaint under the Freedom of the Press Act shall be exercised not later than three months after the publication of the impugned text. Texts of decisions of the Federal Supreme Court are also mentioned which specify the conditions under

/...

which written publications are punishable under the law. On 8 April 1953, the court held that the publication of a pamphlet in which a citizen, of whatever political opinion, voices, without using objectionable language, his views against an international agreement, does not constitute a criminal offence (Appeal No. 32,425).

133. Other decisions, rendered on 12 July (Appeal No. 2371) and 2 December 1954 (Extraordinary Appeal No. 25,348) stress that the administrative confiscation of newspapers, or other interference with their circulation, are unlawful when there is no evidence of the commission of a Press offence defined by law and when the rules of procedure provided for by law have not been complied with.

134. In Norway section 100 of the Constitution provides that liability for press offences may be incurred only by those persons who, in any publication they have caused to be issued, clearly show or incite others to disobedience to the laws, contempt of religion or morality or of the constitutional powers; or who advance false and defamatory accusations against other persons.

135. In Pakistan article 8 of the Constitution provides that reasonable restrictions may be imposed by law on freedom of expression, in the interest of the security of Pakistan, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

136. In the Philippines, the Supreme Court has recognized that an unrestricted exercise of freedom of expression may endanger public security and morality, as well as the impartial administration of justice.

137. The United Kingdom, referring to the general law on defamation, mentions that the Press benefits from certain defences under the Libel Act, 1843, and from qualified privileges with regard to a wide range of reports on matters of public interest (Defamation Act, 1952, sections 4, 7).

(b) Prior restraints

138. Australia refers to two laws enacted by Queensland and Tasmania in 1954, which provide for Review Boards with power to declare certain publications objectionable and to prevent their circulation within the State. The publications, to be considered objectionable, must contain statements or pictures suggesting or unduly emphasizing matters of sex, crime, cruelty, or violence; or be blasphemous, injurious to morality or likely to encourage public disorder or

/...

the commission of any indictable offence; or be otherwise calculated to injure the citizens of the State. In determining the objectionable character of publications, the Boards should have regard, not only to their nature, but also to the classes of persons and age groups among which the publications are likely to be distributed, their tendency to deprave and corrupt such persons (Queensland and Tasmania), the circumstances in which the publication is distributed in the State, and the scientific or artistic merits of the publications (Tasmania). During the appeals proceedings which any aggrieved person may initiate before the courts, the onus of establishing the objectionable character of the publication rests upon the Board (Literature Board of Review v. Invincible Press, Ex Parte Invincible Press and Truth and Sportsman Ltd. (1955), Supreme Court of Queensland; State Reports (Queensland) 525).

139. Cambodia reports that a law of 13 January 1956 suppressed all controls over the press prior to publication, whether the information or opinion came from Cambodian or foreign sources.

140. In Denmark article 77 of the Constitution provides that censorship and other preventive measures shall never be introduced.

141. Finland reports that a Commission established under law no. 1175/1945 may prohibit the projection of films in the interest of public order, security or morality, the healthy development of young persons, or maintaining good relations with foreign States.

142. Morocco reports that, under dahirs of 29 June 1935 and 30 August 1939, the administrative authorities may seize any publication which is likely to disturb public order.

143. In Norway, while the censorship of printed matters is excluded under the Constitution, other laws prevent the projection, especially to young persons, of films which show indecent or brutal behaviour.

144. The Philippines reports that the Supreme Court has held that the authority granted to the Director of Posts to exclude from the mails any written or printed matter and photographs of an indecent or libelous character should be accomplished in such a manner as not to interfere with the freedom of the press (Sotto v. Ruiz, 41 Phil. 468).

145. Sweden reports that the Swedish Act on Freedom of the Press prohibits censorship of material in advance of publication.

146. The United Kingdom reports that under the Cinematograph Act, 1909, the competent local authorities issue licences to cinemas on condition that they shall show only films passed by the Board of Film Censors, a voluntary body established by the trade.

(c) Penal sanctions

(i) Protection by penal law of public order, security, maintenance of international peace, religion and morality

147. Brazil reports that Act No. 2083 of 1 November 1953 forbids propaganda in the press in favour of the use of violence for the purpose of subverting the political or social order and war propaganda. A Ministerial Decree No. 899 of 9 October 1956 provides that radio stations shall not broadcast statements calculated, inter alia, to subvert order, to incite persons to strike, to provoke animosity among the armed forces or between them and the civilian authorities, and to instigate collective non-compliance with the law.

148. Hungary refers to Law No. 1950:V which provides for the severe punishment of persons guilty of war propaganda.

149. Morocco reports that the laws in force define as press offences, inter alia, incitement to commit criminal offences, and instigation to disorder.

150. In the Philippines obscene publications are punished under the Penal Code.

151. Sweden reports that Swedish Penal Law contains rules prohibiting the advocacy of certain crimes.

152. The United Kingdom reports that an essential element in sedition, as defined in various statutes (Incitement to Mutiny Act, 1797; Incitement to Disaffection Act, 1934, Police Act 1919) is intention to incite unlawful disturbance or breach of the peace. The Official Secrets Acts (1911 to 1939) also lay down certain restrictions on freedom of expression.

153. Blasphemy is still an offence at common law, provided there are in the impugned statement certain elements which are likely to cause a breach of the peace (Bowman v. Secular Society Ltd., 1917, A.C.406). Reference is also made to the law relating to obscene publications and to the Theatres Act (1843) under which the performance of a play may be disallowed in the interest of morality or public order.

/...

(ii) Protection by penal law of the honour and reputation of others

154. The following Governments refer in general terms to provisions punishing defamation: Morocco; Norway (section 100 of the Constitution); and the Philippines (articles 353-362 of the Penal Code).

155. In Brazil, defamatory statements in the press are punished under Act No. 2083 of 12 November 1953, which also provides for the right of reply, to be exercised within three months of the publication (Amendment enacted on 16 February 1956); the same act forbids press propaganda calculated to promote racial or class discrimination. The Ministerial Decree of 9 October 1956 punishes the broadcasting, inter alia, of insults directed at the constituted authorities.

156. In China the Criminal Code punishes the making or circulating defamatory statements, and contains detailed provisions concerning admissible defences against libel action.

157. Sweden reports that under the Penal Code (article 11, 7) any threat, slander or abuse in public of a group of persons of a certain race or religion is punished.

(iii) Protection of the proper administration of justice

158. Australia refers to a decision of the Supreme Court of New South Wales, rendered in 1954, which held that, although information media had the right to discuss matters of public interest (such as the conduct of police forces) and to give concrete illustration of their opinions, they may, in certain circumstances, be declared guilty of contempt of court when they select as illustration matters relating to cases pending before a court of law (Ex parte McRae: re Consolidated Press Ltd. (1954), 54 State Reports, (New South Wales) 119).

159. The United Kingdom reports that freedom of expression may be restricted in accordance with the law relating to contempt of court, which covers such offences as abusing the judge, or publishing comment likely to prejudice a fair trial. The rights of Parliament are similarly protected.

ARTICLE 20

160. The following questions relating to article 20 were dealt with in the reports:

1. Freedom of assembly
2. Freedom of association^{1/}

Developments during 1954-56

161. One government reported developments during the period under review: Austria (see paras. 162, 163, 170).

1. Freedom of assembly

162. Austria reports that under the State Treaty for the Re-establishment of an Independent and Democratic Austria (BGBl.152/1955) freedom of assembly of Austrian citizens is guaranteed and citizens of the Slovene and Croat minorities enjoy this right on equal terms. Certain restrictions are placed on this freedom in the case of fascist activities (article 9).

163. Under the Military Service Act (BGBl.No. 181/1955, article 36) members of the armed forces in uniform are not allowed to attend public meetings.

164. In China the Constitution provides that the people shall have freedom of assembly.

165. In Finland the Constitution provides that citizens shall have the right of assembly without previous authorization for the discussion of public affairs or all other legitimate purposes. Public performances, whether free or not, must be authorized (Decree Nos. 131/1924 and 33/1931).

166. The Philippines reports that the Bill of Rights of the Constitution provides that no law may be passed abridging the right of the people peaceably to assemble and petition the Government for redress of grievances. Civil action for damages may be brought for any infringement of this right. Under the Revised Penal Code a public officer or employee can be punished who, without legal ground, prohibits or interrupts a peaceful meeting, or dissolves it. The Code contains penalties for illegal assemblies (meetings attended by armed persons for the purpose of committing crimes punishable under the Code, or in which the audience is incited to commit treason, rebellion, insurrection, sedition or assault upon a person in authority or his agent) (article 146).

^{1/} See also under Article 23: Right to form and to join trade unions (E/CN.4/757/Add.3, paras. 109-114).

167. A case is cited in which the Supreme Court held that an application for a permit to hold a public meeting cannot be denied merely on the ground that the speeches to be delivered might undermine the public peace and order (Primicias v. Fugoso, 45 O.G. 3280). The right cannot be invoked where the meeting is characterized by tumult and disorder of such a degree as to bring a clear and present danger to public peace (People v. Evangelista and Ramos, 57 Phil. 370).

168. Sweden reports that the right of assembly is protected by law.

169. The United Kingdom reports that the right to freedom of peaceful assembly exists in the absence of legal provisions prohibiting its exercise, although certain statutory provisions exist which restrict and regulate it. For example, processions may be regulated (Public Order Act 1936 and Public Order Act (Northern Ireland) 1951); the police must repress disorder at a meeting even if held on private land; disorderly behaviour and the use of threatening, abusive or insulting language is an offense (Public Meetings Act 1908); certain types of meetings are restricted within the vicinity of Parliament when Parliament or the High Court is sitting. With respect to the Non-Self-Governing Territories the Government reports that certain restrictions had to be placed on the right of assembly under emergency powers, but these were consistent with article 29 of the Universal Declaration, in particular with regard to securing the freedom of others and of public order.

2. Freedom of association^{1/}

170. Austria reports that under the State Treaty (BGBl. 151/1955) freedom of association of Austrian citizens of the Slovene and Croat minorities is guaranteed and restrictions placed on it in the case of fascist activities. In 1954 the Association Act (BGBl. No.141) regulated the administration of the assets of associations which had been dissolved, and the Federal Act (BGBl. No.196/54) amending the Act for the Protection of Labour and Freedom of Assembly provided that employers might no longer deduct contributions for membership in associations or parties from their employees' pay.

171. China reports that freedom to form associations is guaranteed under the Constitution (article 147) and to compel anyone to join an association constitutes a punishable offence under the Criminal Code (article 304).

^{1/} See also under article 23: Right to form and to join trade unions, E/CN.4/757/Add.3, paras. 109-114.

172. Denmark reports that a new paragraph was added to article 78 of the Constitution of 1953 providing for the dissolution by judicial decree of any association aiming at attaining its object by violence, instigation to violence or similar means.

173. Finland reports that under the Constitution citizens have the right of forming associations for purposes not contrary to law or good morals (article 10). Citizens also have the right to establish non-profit making associations without prior official authorization. Associations for profit may be formed but their position has not been regulated by legislation. Associations of a military character, whose aim is to carry out political activities are prohibited. Government authorization is required to form associations involving the use of firearms, except for hunting or preservation of game; or associations where more than one-third of the members are foreign nationals. Only citizens may belong to associations whose main aim is to carry out political activities (Act No.1/1919 on Associations).

174. Associations are formed on a voluntary basis and members may withdraw at any time.

175. In Hungary the Constitution provides that the Republic ensures the right of association in the interest of developing the social, economic and cultural activities of the workers (paragraph 56).

176. Norway reports that the Constitution contains no provisions on the right to found and participate in organizations with recognized legal objectives, but no limitations on this right are imposed by legislation. No one is legally bound to belong to any organization.

177. The Philippines reports that the Bill of Rights of the Constitution guarantees that the right to form associations or societies for purposes not contrary to law shall not be abridged (art. XIII, sec.1 (6)). Civil action for damages may be brought for any infringement of this right. The revised Penal Code contains penalties against any public officer or employee who, without legal ground, hinders any person from joining a lawful association or attending any of its meetings (article 131). The Code also contains penalties against illegal associations (those totally or partially organized for the purpose of committing any of the crimes punishable under the Code, or for some purpose contrary to public morals) (article 147).

178. The Government reports a case in 1932 in which it was held that the then Communist Party, whose constitution and by-laws declared that its purpose was to incite class struggle and overthrow the Government by peaceful or armed revolution, was an illegal association within the meaning of the above article.

179. Sweden reports that freedom of association is protected by law.

180. The United Kingdom reports that the right of association derives from the absence of legal provision prohibiting its exercise. It is subject to the restrictions of criminal and civil law relating to conspiracy. It is a crime for an association to be organized for the purpose of usurping the functions of the police or the armed forces or of using force for a political object; and the use of uniforms by political associations is controlled (Public Order Act 1936). Apart from such restrictions and those mentioned under article 23, there is no restriction known to the law on a man's right to join or refuse to join any particular association. The Government reports that in the Non-Self-Governing Territories restrictions had to be placed on the right of association under emergency powers (see para. 169 above).

ARTICLE 21

181. The following questions relating to article 21 were dealt with in the reports:

1. Right to participate in government
2. Right to vote
3. Right of access to public office
 - (a) By election
 - (b) By appointment

Developments during 1954-6

182. Ten governments reported developments during the period under review: Austria (see paras. 193, 213); Brazil (see para. 194); Cambodia (see para. 195); Ceylon (see para. 196); Czechoslovakia (see paras. 198, 214); France (see paras. 202-206, 220, 222); Hungary (see paras. 188, 207); Morocco (see para. 189); Pakistan (see para. 190); Philippines (see para. 226) and United Kingdom (see para. 228).

1. Right to participate in government

183. China reports that its political institutions are in accordance with the principles of democratic government. Laws must be adopted or approved by an elective Assembly (the Legislative Yuan) which may initiate referendums, and to which the Executive Yuan is responsible. The people may ask their representatives in the Legislative Yuan to amend the Constitution or to pass new laws.

184. Denmark reports that under the Constitution of 1953 the form of government shall be that of a constitutional monarchy; the legislative power is vested in the King and Parliament jointly, and the executive power is vested in the King.^{1/}

185. Finland reports that under article 2 of the Form of Government, the authority of government belongs to the nation represented by Parliament, which exercises the legislative power in conjunction with the President of the Republic.

186. France refers to the Declaration of the Rights of Man and of the Citizen of 1789, laying down the principle that sovereignty belongs to the people as a whole.

187. In the overseas territories the Acts of 10 and 15 November 1956 increased the membership of the elected territorial assemblies. The "loi-cadre" of 23 June 1956

^{1/} See also under articles 1, 2 and 7, Protection of Minorities (E/CN.4/757, paras. 172-173).

provides for the establishment in rural areas of local councils ("conseils de circonscription, collectivités rurales") to decide on matters relating to the budget and patrimonial interests of the communities.

188. Hungary reports that the Parliamentary Resolution No.1 of 1956 aims at improving the work and methods of work of Parliament, which is the supreme organ of state power, elected on the basis of full democracy.

189. Morocco reports that the tribes and tribal groups have "jemâas" or local elected assemblies. The members of the municipal and provincial assemblies are to be elected. The professional chambers of agriculture, commerce and industry have been elected since 1947. The "National Advisory Council", which met for the first time in November 1956, is composed of persons appointed by the King on the proposal of the parties, organizations and groups concerned. As soon as circumstances permit, the Council is to be replaced by a National Assembly elected on a democratic basis.

190. Pakistan reports that, in accordance with its Constitution, sovereignty vests in the people, and the Government is to be carried out by their elected representatives. The head of the State is elected by the people's own representatives and may be impeached for violating the Constitution or for gross misconduct.

191. In the Philippines sovereignty resides in the people which take part in the election of public officers and must approve amendments to the Constitution (articles II, V and XV of the Declaration of Principles of the Constitution). Articles 143 and 144 of the Revised Penal Code penalizes acts tending to prevent the meeting of Congress and similar bodies or disturbing the proceedings thereof.

192. The United Kingdom reports that Parliament must meet at least annually in order to vote the money necessary for the administration and that it can be dissolved by the Crown at any time on the advice of the Prime Minister. Its maximum duration is five years (Parliament Act, 1911, s. 7.), but in times of emergency an existing Parliament may be prolonged by statute.

2. Right to vote

193. Austria refers to the State Treaty of 15 May 1955 for the re-establishment of an independent and democratic Austria (BGBl. No. 152/1955) which guarantees the right of all citizens to free, equal and universal suffrage.

194. Brazil reports its approval, by Legislative Decree No.123 of 1955, of the Convention on the Political Rights of Women.

195. Cambodia reports that because of the Indochinese war the right to vote could not be exercised in normal conditions until after the Geneva agreements (end of 1954). General elections were held in 1955. Under an Act of 14 January 1956 provincial assemblies were established and elections to them have been held in almost all provinces. National Congresses have also been set up where representatives of the people freely debate public affairs. Since 1955 the village chiefs (Mékhums) are elected, not appointed.

196. Ceylon reports that provision is made in the Indian and Pakistani (Parliamentary Representation) Act No. 36 of 1954 for persons registered as citizens of Ceylon under the Indian and Pakistani Residents (Citizenship) Act. No. 3 of 1949 to be represented in Parliament and, after registration, to exercise their right to vote.

197. China states that members of the Legislative Yuan are elected by direct and universal suffrage.

198. Czechoslovakia reports that under Act No. 14/1954 Collection on Elections to National Committees amended by Act No. 11/1957 Collection, members of National Committees are elected by secret ballot on the basis of universal, equal and direct suffrage. The right to vote is denied only to persons who have been deprived of it by valid decision of a court, or who are suffering from mental illness. Members of the National Committees may be recalled by their constituents.

199. In Denmark the Constitution of 1953 provides (article 29, para. 1) that: any Danish national, subject to conditions of residence and age qualifications, provided he has not been declared incapable of conducting his own affairs, may participate in elections to Parliament; that the extent to which conviction for a criminal offence shall entail disenfranchisement must be laid down by Statute (None have yet been enacted and consequently conviction for criminal offences does not affect the electoral rights of anybody otherwise qualified to vote, except those serving sentences of imprisonment who are, for practical reasons, unable to exercise the right to vote. Under the old Constitution any such conviction deprived a person of the right to vote.); that the extent to which

public assistance amounting to poor relief shall entail disenfranchisement must be laid down by Statute; that members of Parliament are elected by general and direct ballot (article 31).^{1/}

200. Finland reports that every citizen over twenty-one has the right to vote with the exception of persons under guardianship, persons sentenced to the workhouse or to forced labour for vagrancy, persons declared legally incapable or unfit to serve as third parties in legal proceedings and persons convicted of endangering electoral freedom (Organic Law of Parliament No.839/1944, article 6).

201. Members of Parliament are elected by direct and equal suffrage and by secret ballot and elections are based on proportional representation (Act No. 336/1955). The same principles govern elections to local bodies (Act No. 642/1948 on the communes and Act No. 791/1953 on communal elections) and of the representatives who elect the President of the Republic (Act No. 337/1955).

202. France cites article 3 of the Constitution which lays down that the people's representatives in the National Assembly are elected by universal, equal and direct suffrage and by secret ballot. Decree No. 56-981 of 1 October 1956 consolidated various legislative texts on electoral law.

203. Detailed regulations in the overseas territories were made in November and December 1955 for the elections of the representatives of the overseas territories to the National Assembly. The "Loi-cadre" of 23 June 1956 granted voting rights to all registered citizens over twenty-one, regardless of status. Previously, citizens of "statut personnel", as opposed to citizens of "statut civil de droit commun" could exercise the right to vote only if they were included in certain categories, the scope of which had gradually been enlarged (Act of 5 October 1946, 27 August 1947, 23 May 1951, 6 February 1952).^{2/}

204. The Law of 23 June 1956 also provides for the institution of single constituencies ("college unique") for elections to all assemblies and bodies. The previous practice was thus abrogated of dividing the electorate into two groups

^{1/} For further details see Yearbook on Human Rights for 1953.

^{2/} France has transmitted a table showing how the number of male and female electors registered on the electoral rolls has developed.

which sent separate representatives to such bodies. Single constituencies have existed in Togoland since 1952. As far as local elections are concerned, the Acts of 16 and 18 November 1955 provide for the establishment, wherever feasible, of municipal councils freely elected by universal suffrage in single constituencies; these councils select the mayors. Previously, many local communities were ruled as "communes mixtes", by mayors appointed by the Administration.

205. The inhabitants of Togoland and the Cameroons have the same electoral rights as the peoples of the overseas territories, although they are not French nationals or citizens.

206. Two decisions of the Council of State, in 1954, are mentioned annulling elections on grounds of unfair practices.

207. Hungary reports the promulgation by Law Decree No. 956:16 of the Convention on the Political Rights of Women.

208. Norway reports that members of the National Assembly and of local bodies are chosen through periodic and free elections which are held by secret ballot on the basis of universal suffrage.

209. The Philippines reports that suffrage may be exercised by all literate citizens over twenty-one, subject to conditions as to residence. They may, however, be disqualified from voting if they have been declared guilty of certain crimes or sentenced to imprisonment for one year or more, if they are insane or feebleminded or cannot prepare their own ballots (Republic Act No. 190, Sections 98 and 99). The people elect the President and Vice-President of the Philippines, members of the Congress, provincial Governors and boards, and mayors and municipal councils in cities whose charters so provide. The Republic Act No. 1408, recently enacted, makes elective the offices of barrio lieutenant and members of the barrio councils. An independent Commission on Elections, established by Constitutional amendment, is responsible for the enforcement of all laws relating to the conduct of elections.

210. The United Kingdom reports that universal adult suffrage has obtained since 1928, women having been first given the franchise in 1918. Constituencies do not return more than one member, and the distribution of seats is kept under continuous review by permanent Boundary Commissions. To be qualified to be an elector in a particular place a person must have resided there when the register was compiled; be over twenty-one; be a British subject or citizen of the Irish Republic; and not

/...

be legally incapable. Such incapacities attach to peers in parliamentary elections and to persons found guilty of certain offences (Forfeiture Act 1870, s.2, Public Bodies Corrupt Practices Act, 1889 s.2 (d)). Voting by post or proxy is permitted for invalids or persons whose occupation takes them away from home (Representation of the People Act, 1949, s.13). Franchise in local government elections depends on the same qualifications except that peers are not disqualified, and there is also a non-resident qualification based on the occupation of property.

211. All elections are by secret ballot (parliamentary elections since 1872, local elections since 1949). Each elector may cast only one vote.

212. The law relating to parliamentary franchise and elections in Northern Ireland is substantially the same although there are some differences in qualifications for registration as an elector and in the right of some electors to exercise more than one vote. Qualification for voting in local government elections depends upon residence in a dwelling-house as occupier (or spouse of an occupier) or of other premises of a certain minimum rateable value.

3. Right of access to Public Office^{1/}

(a) By election

213. Austria reports that the State Treaty of 1955 guarantees to all citizens the right to be elected to public offices (article 8).

214. Czechoslovakia reports that all citizens who have the right to vote under Acts No. 14/1954, 10/1957 and 11/1956 on National Committees and who have reached the age of twenty-one may be elected to those committees.

215. In Denmark article 30 of the Constitution of 1953 provides that any person who has the right to vote at parliamentary elections shall be eligible for membership of the Parliament, unless he has been convicted of an act which in the eyes of the public makes him unworthy of such office; civil servants who are elected shall not require permission from the Government to accept their election.

^{1/} See also under Right to vote (Brazil, para. 194 and Hungary, para. 207).

216. Finland reports that every citizen who has the right to vote may be elected to Parliament, except those on active military service, members of the High Courts, and certain other officials.

217. The United Kingdom reports that any person eligible to vote at parliamentary elections is also eligible for membership of the House of Commons except holders of judicial office, civil servants, members of the regular armed forces and police, members of the legislature of any country outside the Commonwealth, holders of certain other specified public offices, members of the clergy, and bankrupts.

(b) By appointment

218. In Cambodia article 13 of the Constitution provides that all citizens shall have access to all public offices on the sole basis of merit.

219. Finland reports that all Finnish citizens have access to public office, except those who temporarily have lost their civic rights or who have been declared unfit for public service. In accordance with the Law No. 112/1926, men and women are equally eligible for public office; there are, however, certain offices which, due to the nature of the functions involved, are reserved for persons of one or the other sex (Decree No. 114/1926). The religion which a person professes may not be an obstacle to his appointment to a public office (Law No. 173/1921) except that religious instruction in the creed of the Evangelical Lutheran Church may be taught only by persons who belong to that Church. The same principles govern eligibility for public office in the local communities.

220. France cites the preamble to the Constitution which guarantees to all citizens equal access to public office. The Government also mentions several judicial decisions of the Council of State which held that it is unlawful to deny a person access to public office on grounds of sex (Dame Befix, 13 February 1956), or political opinions (Barel et autres, 28 May 1954; Guille, 1 October 1954), or an appointment to a teaching post in a public school on the ground that the applicant had been educated in private schools (Janinet, 7 July 1954).

221. With regard to the Overseas territories, in accordance with articles 81 and 82 of the Constitution, all citizens, of whatever status, are equally eligible to all public offices (Opinion No. 246, 772 of 12 May 1949 by the Council of

/...

State; Law of 30 June 1950, article 3). Scholarships have been granted to inhabitants of the overseas territories in order to enable them to pass the examinations leading to high public offices (Act No. 55-307 of 19 March 1955). Decrees No. 55-1407 of 19 October 1955 and 56-1049 of 13 October 1956 facilitate the access of military staff from the overseas territories to higher grades within the armed forces.

222. The "loi-cadre" of 23 June 1956 provides for the creation in the overseas territories of an autonomous body of public officials (fonction publique). The inhabitants of Togoland and the Cameroons, although they are not French citizens, have free access to all public offices. The laws summarized above are also applicable to them.

223. Hungary refers to Law No. 1948: LVIII which guarantees to women equal status with men in respect of employment in the public service.

224. Morocco reports that access to public office is open to all equally, including Jews and Moslems on the sole basis of merit. It is generally subject to competitive examination.

225. Norway reports that certain provisions of the Constitution and certain statutes require, in some cases, that members of the government and holders of public offices shall profess the State religion. An Act of 18 November 1955 provides that the King, elementary schools officials and principles of secondary schools grant dispensation, in special circumstances, when the person concerned does not give religious instruction.

226. The Philippines refers to article XII, sections 1 and 4 of the Constitution which provide that public offices are equally accessible to all on the sole basis of merit and as far as practicable after competitive examination with a few exceptions relating to policy-making, confidential and highly technical posts; no public servant shall be removed or suspended except for the reasons provided for by law. Several Executive Orders of 1937, 1954 and 1955 prohibit the practice of nepotism in appointment to public offices.

227. Sweden reports that the principle of equal access to public office is established in Swedish law, except that cabinet ministers should, under the Constitution, belong to the Swedish State Church.

228. The United Kingdom reports that civil service posts are open to all regardless of race, colour, religion and, in most cases, sex. Candidates must meet the requirements of the Civil Service Commissioners in their general regulations made under the Civil Service Order-in-Council 1956. In broad terms these require candidates to be British or Irish by birth or descent and are more strictly enforced for posts in the Foreign Service than for posts in the Home civil service. There are some limitations upon the employment of married women in the Foreign Service and some situations in the Home civil service to which women would not be appointed. (e.g. posts in the Admiralty and War Office or the Immigration Service of the Home Office, customs, water guard service and certain other posts where essential features of the work make it unsuitable for women).

229. Access to local public office is open to citizens without discrimination except that in some branches (e.g. fire brigades) it is natural to employ men and in others (e.g. certain health and welfare services) women may be preferred.
