UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Follow-up - State Reporting
Action by Treaty Bodies, Including Reports on Missions

CCPR A/58/40 vol. I (2003)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

...
Overview of the application of the follow-up procedure

265. At its seventy-first session, in March 2001, the Committee began its routine practice of identifying, at the conclusion of each set of concluding observations, a limited number of priority concerns that had arisen in the course of the dialogue with the State party. The Committee has identified such priority concerns in all but one of the reports of States parties examined since the seventy-first session. Accordingly, it requested that State party to provide, within one year, the information sought. At the same time, the Committee provisionally fixed the date for the submission of the next periodic report.

266. As the Committee's mechanism for monitoring follow-up to concluding observations was only set up in July 2002, this chapter describes the results of this procedure from its initiation at the seventy-first session in March 2001 to the close of the seventy-eighth session in August 2003. These are described session by session, but in future reports this overview will limit itself to an annual assessment of the procedure.

State party	Date information due	Date reply received	Further action
...			
Seventy-third session (October 2001)			
...			
United Kingdom of Great Britain and Northern Ireland	1 November 2002	7 November 2002	At its seventy-seventh session, the Committee decided to take no further action.

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

...

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for Follow-up on Concluding Observations (CCPR/C/99/2/CRP.1)

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2. **Mr. Amor**, Special Rapporteur for Follow-up on Concluding Observations, said that, while he commended the excellent work of the secretariat, it was regrettable that the relevant staff did not have more time to devote to follow-up on concluding observations. At the Committee's request, he had undertaken to supply details of the contents of the letters sent to States parties concerning follow-up in which the Committee asked for further information, urged the State to implement a recommendation or, alternatively, noted that a reply was satisfactory.

...

37. **Mr. Amor**, referring to the sixth periodic report of the United Kingdom, submitted on the due date of 1 November 2006, said that on 26 April 2010 a letter had been sent to the State party seeking additional information, but no reply had yet been received. If none was received, a reminder would be sent. He recalled, however, that at its previous session the Committee had omitted to deal further with paragraph 12 of the report on the deportation of individuals, including persons suspected of terrorism, to countries where they might be at risk of torture. The Committee had therefore agreed to make a recommendation on that paragraph, but the State party had not acted on it. It claimed that diplomatic assurances, combined with a study of the legislation of the country in question and the circumstances of each case, offered a sufficient guarantee against the risk of torture. The Committee's position, however, was that where torture was systematically practised in the country concerned, such assurances were not sufficient. He sought the views of the Committee as to whether he should formally pursue the recommendation.

38. **Mr. Thelin** said that, in his view, the Committee should stand by its recommendation. If the Special Rapporteur considered the State party's response to be inadequate, he should pursue the matter. In most cases, diplomatic assurances would be insufficient to allay the risk of torture.

39. **Mr. Rivas Posada** agreed. The Committee had no option but to insist on its recommendation, although there was little likelihood that the State party would change its stance.

40. **Mr. O'Flaherty** said he wondered why the State party in question was being singled out. All States parties should be treated the same way.

41. **Mr. Amor** agreed, but said he was not being selective; the same issue arose for other States parties. He referred to a recent study by Human Rights Watch of diplomatic assurances on the question of torture. That study covered three States, including the United Kingdom. It was open to the Committee to draw upon information from such other sources. Insisting on its position was one option for the Committee, but it did not offer very positive prospects. Moreover, he was anxious not to avoid dialogue with the State party concerned. He suggested asking the United Kingdom to cite specific cases where diplomatic assurances had proved successful, in spite of a real risk of the deportee being tortured.

42. **Mr. O'Flaherty** said he shared the concerns of the Special Rapporteur but, in his view, it was not the right context in which to pursue a dialogue with a State party beyond the normal follow-up procedure. No such action had been taken on any other issue with a State party.

43. **Mr. Amor** said he was in favour of dialogue with all States parties as a matter of principle. Not pursuing dialogue would do nothing to promote human rights. He emphasized that the Committee's recommendation on paragraph 12 of the United Kingdom report had not been implemented.

44. **The Chairperson** proposed that the Special Rapporteur should pursue his dialogue with the State party, bearing in mind the views expressed in the Committee.

45. ***It was so decided.***

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Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,[16] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,[17] an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[18] Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.[19]

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

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Ninety-third session (July 2008)

...

State party: United Kingdom of Great Britain and Northern Ireland

Report considered: Sixth periodic (due on 1 November 2006), submitted on 1 November 2006.

Information requested:

Para. 9: Conduct, as a matter of particular urgency, independent and impartial inquiries in order to give an account of the circumstances surrounding violations of the right to life in Northern Ireland (art. 9).

Para. 12: Ensure that all individuals, including persons suspected of terrorism, are not returned to another country if there are substantial reasons for fearing that they would be subjected to torture or cruel, inhuman or degrading treatment or punishment; recognize that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be; exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals (art. 7).

Para. 14: State clearly that the Covenant applies to all individuals who are subject to its jurisdiction or control; conduct prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders), in detention facilities in Afghanistan and Iraq; ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime; adopt all necessary measures to prevent the recurrence of such incidents, in particular by providing adequate training and clear guidance to its personnel (including commanders) and contract employees, about their respective obligations and responsibilities; provide information on the measures taken to ensure respect of the right to reparation for the victims (arts. 2, 6, 7 and 10).

Para. 15: Ensure that any terrorist suspect arrested is promptly informed of any charge against him or her and tried within a reasonable time or released (arts. 9 and 14).

Date information due: 1 August 2009

Date information received:
7 August 2009 Follow-up report received (para. 9: replies incomplete; para. 12: no replies to some questions; partly not implemented; para. 14: recommendations implemented in part; replies satisfactory in part and incomplete in part; para. 15: replies satisfactory in part and incomplete in part).

Action taken:

26 April 2010 A letter was sent indicating that the procedure was complete with regard to the issues concerning which the information supplied by the State party was considered to be largely satisfactory: application of the Covenant to all individuals who are subject to its jurisdiction or control (para. 14). The letter included a request for additional information on certain questions: destruction of documents and delays in the "Billy Wright" inquiry (para. 9); independence of inquiries (para. 9); investigations into allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment in detention facilities in Afghanistan and Iraq (para. 14); and measures taken to ensure respect for victims' right to reparation (para. 14). In addition, the Committee invited the State party to keep it informed of any news on the appeals before the Belfast courts on the use of extended periods of detention (para. 15).

Recommended action: A reminder should be sent, including a request for additional information on certain questions: diplomatic assurances (para. 12).

Next report due: 31 July 2012

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[16] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

[17] Ibid., *Sixty-Fourth Session, Supplement No. 40*, vol. I (A/64/40 (vol. I)).

[18] The table format was altered at the ninetieth session.

[19] As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

Follow-up - Reporting
Action by State Party

CCPR CCPR/CO/73/UK/Add.1 (2002)

Comments by the Government of Mauritius to the concluding observations of the Human Rights Committee on the United Kingdom of Great Britain and Northern Ireland and Overseas Territories: Mauritius, United Kingdom of Great Britain and Northern Ireland

1. By letter dated 3 January 2002, the Permanent Representative of Mauritius to the United Nations Office at Geneva transmitted to the Chairman of the Human Rights Committee the comments of the Mauritius authorities on paragraph 38 of the advance unedited version of the concluding observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland (CCPR/CO/73/UK, CCPR/CO/73/UKOT dated 5 November 2001), released by the Office of the High Commissioner for Human Rights, in which mention is made of the British Indian Ocean Territory (BIOT).

2. The Government of the Republic of Mauritius wishes to submit the following clarifications to the members of the Human Rights Committee.

3. Mauritius consists mainly of an island of 720 square miles found in the south-west of the Indian Ocean and which has a population of 1.2 million.

4. Mauritius obtained its independence from the United Kingdom on 12 March 1968. Prior to Mauritius being granted its independence, the Chagos Archipelago was unlawfully excised by the United Kingdom from the territory of Mauritius. This excision was done in violation of the United Nations Declaration on the granting of independence to colonial countries and peoples (General Assembly resolution 1514 (XV) of 14 December 1960) prohibiting the dismemberment of any colonial territory prior to independence, and Assembly resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967. It should be noted that paragraph 6 of the Declaration stipulates that "Any attempt aimed at the partial or total disruption of national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".

5. The Chagos Archipelago had always been under the administrative rule of Mauritius until its unlawful excision by the then colonial power. Mauritius has never relinquished its sovereignty over the Chagos Archipelago and has, ever since this unlawful excision, consistently and persistently pressed the United Kingdom Government both in bilateral and multilateral forums for the early and unconditional return of the Chagos Archipelago to Mauritius.

6. In this context, the Government of Mauritius has continuously received the support of the Organization of African Unity and the Non-Aligned Movement on this issue. Only recently, the OAU Council of Ministers meeting in Lusaka in July 2001 reiterated its unflinching support to the Government of Mauritius in its endeavours and efforts to restore its sovereignty over the Chagos Archipelago and called upon the United Kingdom to put an end to its continued unlawful

occupation of the Chagos Archipelago and to return it to Mauritius, thereby completing the process of decolonization. The OAU Council further exhorted the United Kingdom authorities not to take any steps or measures likely to adversely impact on the sovereignty of Mauritius.

7. Mauritius also reiterates its request every year at the United Nations General Assembly for the return of the Chagos Archipelago to Mauritius. In accordance with article 2 of the International Covenant on Civil and Political Rights, Mauritius has repeatedly called for the former inhabitants of the Chagos Archipelago and their families, who were forcibly evicted to Mauritius by the then colonial power, to be allowed to return to the Archipelago, including Diego Garcia. At the General Assembly in November 2001, Mauritius reiterated its claim of sovereignty over the Chagos Archipelago.

8. The Mauritian Government therefore does not recognize any British Indian Ocean Territory (BIOT) or any British Overseas Territory (BOT) insofar as those terms purport to describe or refer to the Chagos Archipelago. The Mauritius Government continues to vehemently challenge the competence of the British Government or any other Government to legislate for a part of Mauritian territory which is and has always been under Mauritian sovereignty and intends to take measures to vindicate its right at all relevant places and forums.

9. Whenever the Chagos issue has been raised, Her Majesty's Government in the United Kingdom has maintained that sovereignty over the Chagos Archipelago will revert to Mauritius when the military facility on Diego Garcia is no longer needed for the defence of the West. Indeed, in a letter dated 1 July 1992 addressed to the Mauritian authorities, the British authorities gave an undertaking to the Government of Mauritius that when the Chagos would no longer be needed for the defence purposes of the United Kingdom and the United States, it will be ceded to Mauritius.

10. Mauritius is still pursuing the resolution of this issue through diplomatic means and has sought the support of the United States to that end. The Mauritius authorities will, however, remain vigilant with regard to any attempt from any quarter likely to cause an adverse impact on the sovereignty of Mauritius.

11. The Government of Mauritius would be grateful if the Office of the High Commissioner for Human Rights and the Human Rights Committee could consider the foregoing elements when finalizing the documents under reference.

CCPR CCPR/CO/73/UK/Add.2 & CCPR/CO/73/UKOT/Add.2 (2002)

Comments by the Government of the United Kingdom of Great Britain and Northern Ireland on the reports of the United Kingdom (CCPR/CO/73/UK) and the Overseas Territories (CCPR/CO/73/UKOT)

[7 November 2002]

I. INITIAL RESPONSE TO THE CONCLUDING OBSERVATIONS (CCPR/CO/73/UK), ON THE REPORT OF THE UNITED KINGDOM (CCPR/C/UK/99/5)

A. Introduction

1. In paragraph 40 of its concluding observations (adopted on 29 October 2001) on the United Kingdom's fourth and fifth combined report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on matters referred to in paragraphs 6, 8, 11 and 23 of the concluding observations. The information requested by the Committee is set out below. At the same time, the United Kingdom takes this opportunity to provide information also on two other points which were raised by the Committee in relation to the Overseas Territories and which can appropriately be dealt with now rather than being left to be covered in the sixth periodic report. Information on the remainder of the points raised by the Committee will, as the Committee has requested, be included in the United Kingdom's sixth periodic report.

B. Paragraph 6 - Compatibility of new anti-terrorist legislation with human rights guaranteed in the Covenant

1. Background

2. The Anti-terrorism Crime and Security Act 2001 ("the Act") received Royal Assent on 14 December 2001. We believe the measures contained in this Act both respect and meet the United Kingdom's international human rights obligations.

3. Terrorism represents a grave and fundamental threat to the national security of the United Kingdom and the safety of its citizens. This is a threat that needs to be addressed without compromising the integrity of those international obligations.

4. Article 4 of the International Covenant on Civil and Political Rights permits States to derogate under certain conditions from certain of their obligations under the Covenant in time of public emergency which threatens the life of the nation the existence of which is officially proclaimed.

2. Article 4 (1) of the Covenant

(a) Is there a public emergency?

5. We believe that there is a public emergency threatening the life of the nation. On 30 July 2002, the Special Immigration Appeals Commission in the case of *A and others v. Secretary of State for the Home Department* found it was

> "satisfied that what has been put before us in the open generic statements and the other material in the bundles which are available to the parties does justify the conclusion that there does exist a public emergency threatening the life of the nation within the terms of Article 15 [of the European Convention on Human Rights]. That the risk has been heightened since 11 September is clear, but we do not regard that description as in any way inconsistent with the existence of an emergency within the meaning of article 15 ECHR. The United Kingdom is a prime target, second only to the United States of America, and the history of events both before and after 11 September 2001 as well as on that fateful day does show that if one attack were to take place it could well occur without warning and be on such a scale as to threaten the life of the nation."

6. As regards the closed evidence also before the Special Immigration Appeals Commission, the Commission said: "We have considered the closed material. Suffice to say that it confirms our view that the emergency is established."

(b) Are the measures strictly required by the exigencies of the situation?

7. We believe that they are. This was something considered by the Special Immigration Appeals Commission in the case referred to above, in which it considered the argument on behalf of A and others that other, less intrusive, alternative measures were available to the Government. In the course of considering the lawfulness of the United Kingdom's derogation from article 15 of the European Convention on Human Rights and whether the measures taken were strictly required by the exigencies of the situation, the Commission, having considered the arguments, said: "Bearing that guidance [of the European Court of Human Rights and by the Canadian Supreme Court] and noting and accepting the Government's assertion that there are individuals against whom the provisions (or proposed provisions) identified by the appellants would not be effective, the position is that, even applying the most intrusive scrutiny, we are satisfied that the existence of possible alternative measures does not of itself harm the Government's argument". The Commission further confirmed that they accepted the submissions on behalf of the Government that the provisions for judicial and democratic supervision contained within the Anti-terrorism, Crime and Security Act are both appropriate and sufficient.

(c) Are the powers discriminatory?

8. The decision of the Special Immigration Appeals Commission referred to above is currently under appeal and cross-appeal to the Court of Appeal, and judgement from the Court of Appeal is pending.

9. The Special Immigration Appeals Commission found that the derogation from article 15

of the European Convention on Human Rights was discriminatory for the purposes of article 14 of the European Convention on Human Rights "on the grounds of national origin". This point is under appeal by the Government to the Court of Appeal and we believe that SIAC were wrong.

10. In outline summary, given the pending appeal, we believe that for the purposes of article 4 of the International Covenant on Civil and Political Rights: (a) it is legitimate for a State to distinguish in the field of immigration control (of which the detention measures in Part 4 of the Anti-terrorism, Crime and Security Act form part) between United Kingdom nationals and others; and (b) there are objective reasons for focusing the powers on foreign nationals.

3. Domestic law powers of detention

11. The Government has powers under the Immigration Act 1971 ("the 1971 Act") to remove or deport persons on the grounds that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation, including deportation on the grounds that their presence in the United Kingdom is contrary to the public good. The courts in the United Kingdom have ruled that this power of detention only persists for so long as the person's removal remains a real possibility. If there were no such real possibility (for example, because removal would result in torture or inhuman or degrading treatment) the power of detention would fall away. The person would have to be released, and would be at large within the United Kingdom.

4. Article 9 (1) of the Covenant

12. Article 9 provides, amongst other things, that everyone has the right to liberty and security of person, and that no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

13. It became clear, however, before, during and since the passage of the Anti-terrorism, Crime and Security Act 2001 ("the Act") that the balance between respecting these fundamental civil liberties and safeguarding them from exploitation by those who would destroy them for the wider public is profoundly delicate.

14. The Government was, and remains, of the view that the only practicable way to protect and maintain this equilibrium was to derogate from article 5 (1) of the European Convention on Human Rights and from article 9 (1) of the International Covenant on Civil and Political Rights in respect of the detention powers contained in the Act.

15. The measures in Part 4 of the Act were introduced in particular to deal with the situation where an alien would in normal circumstances be removed or deported from the United Kingdom in the exercise of immigration powers, on grounds that his presence here is contrary to the public good, but where removal or deportation to his country of origin would given rise to a serious risk of torture or inhuman or degrading treatment. There are cases in which a suspected terrorist, even though not a United Kingdom national, cannot be removed from the United

Kingdom.

16. The measures were rigorously considered and scrutinized at the time and were and continue to be judged to be a necessary and proportionate response to the "public emergency threatening the life of the nation".

5. The Anti-terrorism, Crime and Security Act 2001

(a) Legislative Powers

17. Part 4 of the Act recognizes that a suspected terrorist should not be returned to a country where there is a serious risk that he might be tortured or killed, but at the same time he should not be allowed to be at large in the United Kingdom. Given the public emergency threatening the life of the nation, Part 4 of the Act strikes a balance between the interests of the individual suspected terrorist and the general community. It extends the period for which a suspected terrorist may be detained in the United Kingdom, in cases where his removal is precluded, so as to overcome the limitations discussed above on the powers to detain under the Immigration Act 1971.

18. Under section 21 (1) of the Act, the Secretary of State may issue a certificate in respect of a person if the Secretary of State reasonably: (a) believes that the person's presence in the United Kingdom is a risk to national security; and (b) suspects that the person is a terrorist. Under section 22 of the Act, various immigration measures, for example, making a deportation order, may be taken in relation to a suspected international terrorist, notwithstanding that his actual removal will be incompatible with the United Kingdom's international obligations. By virtue of section 23 (1) of the Act, a suspected international terrorist may be detained under the detention powers contained in the Immigration Act 1971 despite the fact that his removal or departure from the United Kingdom is prevented (whether temporarily or indefinitely) by a point of law relating to an international agreement or a practical consideration.

(b) Legislative safeguards

19. This certificate is subject to an appeal to the Special Immigration Appeals Commission, established under the Special Immigration Appeals Commission Act 1997, which has the power to cancel it if it considers that the certificate should not have been issued. In addition, SIAC is obliged to review the certificate after six months after the appeal is finally determined (if there is one) or after the date on which the certificate was issued (if there is no appeal). Subsequent reviews will occur three monthly intervals thereafter (section 26 of the Act). There is the possibility of appeals from SIAC on points of law to the higher courts. SIAC is also able to grant bail, where appropriate, subject to conditions. It is open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

20. Sections 21-23 of the Act are temporary provisions which automatically expire after 15 months, subject to renewal for periods not exceeding one year at a time if both Houses of Parliament are in agreement (sect. 29 (1)). This ensures periodic review by the legislature, in addition to continuing review by the executive. Further, the detention provisions will end with

the final expiry of sections 21-23 of Part 4 of the Act on 10 November 2006 (sect. 29 (7)). If, in the Government's assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order under section 29 (2), discontinue the provision.

6. Review procedures and sunsets

21. The operation of the detention powers (sects. 21-23) in the Act are being reviewed specifically by Lord Carlile of Berriew QC, who is also the independent reviewer of the Terrorism Act 2000. He has been appointed by the Secretary of State under section 28 of the Act and is required to conduct a review of the operation of the detention powers not later than 14 months after the passing of the Act. He is required to send a report of his review as soon as is reasonably practicable to the Secretary of State, who is in turn required to lay the report before Parliament as soon as is reasonably practicable.

22. The provisions of the Act, as a whole, are being reviewed by a Committee of nine Privy Counsellors in accordance with sections 122 and 123. This Committee is obliged to provide a report on their findings and conclusions to the Secretary of State by 14 December 2003.

7. Developments since Royal Assent 14 December 2001

(a) Individuals detained

23. Eleven individuals have been detained in total since the Act received Royal Assent. Two of these have since left the United Kingdom voluntarily. The nine remaining in detention have all lodged appeals against the certification and against the decision to deport. All have brought actions challenging the lawfulness of the derogation that underpins the detention power in the Act.

(b) The SIAC hearings

24. These were heard at the end of July and the SIAC judgement on 30 July recognized that, in the light of the 11 September attacks, there is a public emergency threatening the United Kingdom. SIAC also held that the powers of detention in the Anti-terrorism, Crime and Security Act 2001 are a necessary and proportionate response to that emergency in ECHR terms.

25. SIAC made an initial ruling, however, that the detention powers discriminate "on the grounds of national origin". An appeal against this ruling and a cross appeal against other parts of the SIAC decision were heard in the Court of Appeals in the week beginning 7 October and we await the judgement.

C. Paragraph 8 - Violation of the right to life in Northern Ireland

26. The Government is determined that, where allegations of collusion between State forces and paramilitaries in Northern Ireland have been made, the truth should emerge. That is why, in line with commitments made at Weston Park in August 2001, the British and Irish

Governments recently appointed the Canadian judge Peter Cory to investigate six high-profile cases where there are serious allegations of collusion. These include the murders of the lawyers Patrick Finucane and Rosemary Nelson. Both the British and Irish Governments are committed to implementing Mr. Justice Cory's recommendations, including a public inquiry if that is recommended.

D. Paragraph 11 - Racial violence and racial tension

27. The Government notes the Committee's comments on the disturbances that took place in some English cities in 2001. These disturbances were taken extremely seriously by the Government - they involved hundreds of individuals, caused injuries to both police and members of the public and resulted in millions of pounds' worth of criminal damage. Investigation of criminal acts is a matter for the police and the prosecution authorities. Within the statutory framework created by Parliament, it is for the courts to determine the appropriate sentence in individual cases, taking into account all mitigating and aggravating features.

28. Following the July disturbances in Bradford, the Home Secretary announced the establishment of an interdepartmental Ministerial Group on Public Order and Community Cohesion. It was asked to report to the Home Secretary on what the Government could do to minimize the risk of further disorder and to help build stronger and more cohesive communities. A review team (the Independent Community Cohesion Review Team) was also established. Its terms of reference were:

(a) To obtain the views of local communities, including young people, local authorities and voluntary and faith communities, in a number of representative multi-ethnic communities on the issues that need to be addressed in developing confident, active communities and social cohesion;

(b) To identify good practice and to report this to the Ministerial Group and also to identify weaknesses in the handling of these issues at the local level.

29. The reports of the Ministerial Group and the Independent Community Cohesion Review Team were published in December 2001. The Government believes it is essential to pursue policies and programmes that will build community cohesion and encourage interaction between different groups, rather than to attempt to integrate minorities into one dominant culture.

30. The Government is pursuing comprehensive policies to build community cohesion, which are set out in detail in the ministerial report and which include the following:

> Strengthening legislation to promote equality and protect minorities, for example through the implementation of positive duties to promote race equality under the Race Relations (Amendment) Act 2000; the implementation of the European Race and Employment Directives; strengthening the law on incitement to racial hatred and racially and religiously aggravated offences in the Anti-terrorism, Crime and Security Act 2001.
>
> Strengthening local community leadership, for example by disseminating good practice

guidance to local authorities, publishing proposals to increase local authorities' democratic legitimacy and help develop responsive and accountable local government, appointing community facilitators in areas of community conflict and supporting local voluntary and community organizations.

Strengthening civic identity and sense of citizenship by leading a national debate on citizenship, civic identity, shared values, rights and responsibilities.

Delivering improvements in housing policy, for example by ensuring that minority ethnic groups are not concentrated in the worst housing stock through fear or discrimination. In November 2001, the Government published an action plan for addressing the housing needs of black and minority ethnic people, which brings together the full range of housing policies that tackle ethnic minority issues in housing and has 70 specific action commitments, including on allocations policy.

Promoting inclusiveness in education, for example by revising guidance for specialist schools to include specific examples of cross-cultural activities between schools, setting local targets to narrow gaps in achievement of pupils from different ethnic groups and increasing the number of ethnic minority teachers.

Engaging young people and children, particularly by encouraging the interaction of children and young people of different faiths and cultures. In July 2001, the Government funded a ?7-million programme of additional summer activities, benefiting 200,000 mainly young people. The Government is committed to rebuilding youth services and supporting voluntary sector organizations working with young people.

Rebuilding local economies, increasing the employment rate of people from ethnic minorities and narrowing the gap between the employment rate of ethnic minorities and the overall employment rates.

Tackling poverty and deprivation, for example through the National Strategy for Neighbourhood Renewal, launched in January 2001, which places strong emphasis on local agencies.

More effective policing, for example by assisting the development of effective Crime and Disorder Partnerships, increasing ethnic minority recruitment to the police, and publishing guidance to police forces on hate crime and best practice in policing ethnic minority communities.

31. The Government notes the Committee's suggestion that it should consider facilitating inter-party arrangements to ensure that racial tension is not inflamed during political campaigns. Political parties - like everyone else - are subject to the laws on incitement to racial hatred, which apply during election times as at any other time. However, any inter-party initiatives beyond that are matters for the political parties themselves, rather than the Government of the day.

II. INITIAL RESPONSE TO THE CONCLUDING OBSERVATIONS (CCPR/CO/UKOT/5)

ON THE FOURTH/FIFTH REPORT IN RESPECT OF THE OVERSEAS TERRITORIES (CCPR/C/UKOT/5)

A. Introduction

32. In paragraph 40 of its concluding observations (adopted on 29 October 2001) on the United Kingdom's fourth and fifth combined report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on certain matters which were identified in that paragraph. So far as concerns the United Kingdom's Overseas Territories - to which the present response to the Committee's request solely relates - the matters so identified are those referred to in paragraph 23 of the concluding observations. The information thus requested by the Committee in respect of the Overseas Territories is set out below. At the same time, the United Kingdom takes this opportunity to provide information also on two other points which were raised by the Committee in relation to the Overseas Territories and which can appropriately be dealt with now rather than being left to be covered in the sixth periodic report. Information on the remainder of the points raised by the Committee will, as the Committee has requested, be included in the United Kingdom's sixth periodic report.

33. The matters referred to in paragraph 23 of the concluding observations, as the United Kingdom understands that paragraph, are, first, the question whether the provisions of the Covenant should be incorporated into the domestic legal order of the various Overseas Territories so that they can be directly invoked before, and applied (as such) by, the courts of the Territories; and, second, "the questions not dealt with by the delegation". The United Kingdom understands this latter formula to refer to the questions (or some of them) that were posed, in the course of the oral examination of the report, by Mr. Yrigoyen. The Committee will recall that, for the reasons referred to more fully below, the delegation suggested that it would be more helpful if its reply to some of Mr. Yrigoyen's questions were made in writing and at a later date, and that the Chairman agreed that that should be the procedure to be followed. The United Kingdom understands the Committee's request in paragraph 40, read together with paragraph 23, to reflect that exchange.

B. Incorporation

34. In respect of the incorporation of the Covenant into the domestic law of the Overseas Territories, the position of the United Kingdom Government is as follows. In the absence of a requirement to that effect in the instrument concerned - and no such requirement is imposed by the Covenant - it is not the general practice of the United Kingdom Government to give effect to treaties by incorporating them, verbatim, in domestic legislation so that their provisions operate as if they were the provisions of a domestic statute. Though there have been some cases, in limited and special circumstances (for example, in relation to the Conventions on Diplomatic and Consular Relations), where it has proved convenient to do that, the general practice of the United Kingdom Government, both for the metropolitan territory and for the Overseas Territories, has been simply to introduce such specific new legislation on particular topics, and to make such changes in existing legislation and in existing administrative practice as appears necessary to ensure that the relevant treaty obligations are indeed fully implemented. This new legislation, or these amendments to existing legislation, can of course be framed in terms that are consonant with local legislative drafting practice, and that are directly applicable to local institutions and to

local legal structures and practices, in a way that the direct incorporation of the relevant treaty into the domestic legal order would not usually permit. This mode of proceeding, it is considered, generally enhances the clarity and certainty of the relevant domestic law and thus facilitates the task of the local courts in ensuring that the rights and obligations flowing from the underlying treaties are properly enforced.

35. The United Kingdom's Human Rights Act 1998, which did largely effect the incorporation of the European Convention on Human Rights into the domestic law of the United Kingdom's metropolitan territory, was undoubtedly an important departure from this general practice. The Committee is of course correct in noting that the provisions of that Act do not apply to the Overseas Territories (except, to a limited extent, St. Helena and Pitcairn). However, the Committee is, with great respect, not correct in believing (see paragraph 23 of the concluding observations) that "the protection of Covenant rights in the Overseas Territories is weaker and more irregular than in the metropolitan area". In this respect, the Committee appears not to have given adequate weight to the Bills of Rights (though that is not their formal designation) which now form part of the Constitutions of most of the Overseas Territories: see the United Kingdom's written response to issue No. 1 in the Committee's list of issues arising on the fourth/fifth report.

36. In the first place and treating all the various bills of rights as essentially similar, as indeed they are, though there are some variations in their detailed terms to accommodate variations in local circumstances - the range of rights guaranteed and protected by such a bill of rights is in some respects wider than those protected by the 1998 Act: again see the response to issue No. 1. To the limited extent that there may be rights (or aspects of rights) covered by the Act which are not adequately protected by the standard Overseas Territory bill of rights, it is expected that this deficiency will be remedied in due course when the study referred to at the end of the United Kingdom's response to issue No. 1 has been taken into account.

37. Second, and again as noted in the response to issue No. 1, the status which a bill of rights has as part of the constitution of the Overseas Territory concerned gives it a legal force in the law of that Territory which is superior to that enjoyed in the law of the metropolitan territory by the 1998 Act. The constitution is, for that Territory, the "supreme law of the land", and the provisions of the bill of rights which it contains, as well as setting norms with which all executive action must comply on pain of being held unlawful and invalid, will automatically override any locally enacted law, whether existing or future, which is inconsistent with them. As the Committee will appreciate, this goes further than because of the constraints imposed in the United Kingdom by the principle of the supremacy of Acts of Parliament it was possible for the 1998 Act to go.

38. Third, the enforcement provisions which are contained in the standard Overseas Territory bill of rights give the local Supreme Courts virtually unlimited powers to provide the appropriate and effective remedy for any breach or threatened breach of the guaranteed rights: again see the response to issue No. 1. It is considered that these powers are at least as extensive as those conferred on the United Kingdom courts by the 1998 Act.

39. The Committee has correctly noted that the Constitutions of the British Virgin Islands,

the Cayman Islands, St. Helena and Pitcairn do not yet contain a bill of rights. As regards the first three of those territories, the Committee will be pleased to know that proposals to remedy the deficiency are currently under active consideration in each Territory, and it is hoped that it will shortly be possible to report concrete progress in this matter. As regards Pitcairn, it has to be remembered that the territory has a very small population the latest available count, in October 2001, showed a total population of 48 persons, including the externally recruited teacher, pastor and nurse and their respective families and its governmental and administrative arrangements are correspondingly simple. In these circumstances, and though the question will be kept under review, it is not currently considered realistic to incorporate a bill of rights into Pitcairn's rather elementary Constitution. But the Committee is reminded that, as previously reported and as noted above, the Human Rights Act 1998 of the United Kingdom could in certain circumstances be invoked before the local courts as part of the basic law of the territory.

C. Mr. Yrigoyen's questions

40. The Committee will recall the circumstances relating to the handling of these questions. Briefly, these were as follows. In the course of his general comments on the fourth/fifth report, Mr. Yrigoyen elaborated a number of detailed questions relating to various Overseas Territories. The delegation could, and did, give its response to some of these when responding to the remainder of the questions posed, or comments made, by members of the Committee. However, in the case of some of Mr. Yrigoyen's questions, the delegation found itself unable to give an immediate response, either because the relevant information would need to be sought from the individual territory concerned or, in many instances, because it had proved impossible for adequate note of Mr. Yrigoyen's questions or concerns to be taken as he raised them. (The delegation was of course attempting to follow Mr. Yrigoyen remarks in translation.) It was in these circumstances that the delegation suggested, and the Chairman kindly agreed, that these outstanding questions should be answered subsequently and in writing. It was assumed that the secretariat would be able, for this purpose, to supply the delegation with an authentic English translation of Mr. Yrigoyen's questions.

41. Accordingly, the Permanent Mission of the United Kingdom to the United Nations Office at Geneva has, on more than one occasion after the conclusion of the Committee's session, requested the secretariat to provide such an authentic English translation so that the delegation's undertaking to the Committee could be honoured - and indeed so that the Committee's request in paragraph 40 of the concluding observations could be complied with. However, though the secretariat was able to provide what appears to be the original Spanish text of Mr. Yrigoyen's questions, it has to date been unable to produce the requested English version. (It should be emphasized that no criticism of the secretariat is intended here: the pressures on its technical services are well appreciated.) The United Kingdom has therefore had to resort to procuring its own translation of the secretariat's Spanish text, and the following questions and answers are based on that "unofficial" translation.

1. Bermuda

Q. (a) *Why were only two questions asked in the referendum on self-determination*?

42. This question appears to indicate a misunderstanding of what was said in paragraph 7 of the fourth/fifth report. The referendum put only one question to the people of Bermuda, i.e. whether they wished Bermuda to proceed to full independence as a sovereign State or whether they did not. The answer given to that question was as reported.

Q. (b) *What measures have been taken to combat discrimination*?

43. The United Kingdom Government interprets this question as referring to racial discrimination, but will give that term the very broad connotation which it has for the purposes of, for example, the International Convention on the Elimination of All Forms of Racial Discrimination.

44. Bermuda has for many years maintained a wide range of measures and policies aimed at prohibiting and preventing racial discrimination in both the public and the private sectors and at promoting understanding and good relations between races. These measures and policies, which have been amended and brought up to date from time to time, are vigorously implemented and enforced. They are as follows.

Substantive measures

45. The principal substantive measure is the Constitution itself. Section 12 (1) of the Constitution prohibits any law which, either of itself or in its effect, discriminates between persons by reference to their race, place of origin, political opinion, colour or creed. Section 12 (2) similarly prohibits discriminatory action in the public sphere, that is, by any person acting by virtue of a written law or in the performance of the functions of any public office or public authority. Section 12 (7) prohibits discriminatory treatment in respect of access to places of public resort, e.g. shops, hotels, restaurants, places of entertainment, etc.

46. These provisions of the Constitution have been supplemented by various provisions of the Human Rights Act 1981 (as amended) and by various amendments to the ordinary criminal law.

47. The provisions of the Human Rights Act that deal with racial discrimination are broadly similar to those of the United Kingdom's Race Relations Acts. They render unlawful discriminatory acts or practices by private persons or bodies in the areas of the supply of goods, facilities or services; accommodation; contracts; public notices; employment; and membership of organizations.

48. The Human Rights Act 1981 also prohibits harassment of an employee in the workplace by his or her employer or by the employer's agent or by another employee if the harassment is based on race, colour, ancestry or place of origin. The same Act makes it a criminal offence to publish threatening, abusive or insulting words in a public place or at a public meeting if that is done with intent to excite or promote ill will or hostility against any section of the public by reference to its colour, race, or national or ethnic origins. It is also a criminal offence for any person to do any act calculated to excite or promote such ill will or hostility if he/she does it with intent to incite a breach of the peace or if he/she has reason to believe that that is the likely result.

In addition, the Criminal Code has now been amended so as to recognize the separate offences of racial harassment and racial intimidation, in each case constituted by specific acts committed with the intention of causing another person distress, fear or alarm and with the motivation of antipathy to that other person on grounds of race, colour or place of origin.

49. The Human Rights Act 1981 established a Human Rights Commission as the principal agency for promoting and securing enforcement of its anti-discrimination provisions. The Commission is empowered to approve special programmes which are designed to promote the equality of opportunity of disadvantaged persons or groups or to increase the employment of members of a class or group because of their race, colour, nationality or place of origin.

50. A further, and very important, measure is the Commission for Unity and Racial Equality Act 1994. This established the Commission for Unity and Racial Equality (CURE) whose principal functions are:

> "(a) to promote equality of opportunity and good relations between persons of different racial groups; and
>
> "(b) to work towards the elimination of racial discrimination and institutional discrimination."

51. One of the specific functions of CURE is the issuance, with the approval of the Minister and of both Houses of the Bermuda Legislature, of codes of practice in relation to employment. In the exercise of this function, in September 1997 CURE produced and disseminated its "Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality in Employment". In 1999, the Act of 1994 was amended to require all employers with 10 or more employees to register with CURE and provide CURE with the racial demographics of their employees. In January 2000, the CURE Registration and Return Regulations 2000 specified the information that CURE required to ensure equality of opportunity in the workplace. In addition to information on the racial background of each employee, the race related information collected included information on salaries/wages, on compensation packages, on new hirings and on promotions.

Enforcement machinery

52. The enforcement of the anti discrimination provisions of section 12 of the Constitution (described above) is provided for by section 15 of the Constitution. This enables any person who alleges that those provisions have been, are being or are likely to be contravened in relation to him to apply for redress direct to the Supreme Court. In such a case the Supreme Court has the power to "make such orders, issue such writs and give such directions as it may consider appropriate" to secure the enforcement of the relevant provisions.

53. The Human Rights Act 1981 establishes its own machinery for the enforcement of its anti discrimination provisions. Any person who alleges that he/she is the victim of a contravention of those provisions may make a complaint to the Human Rights Commission. The Commission must investigate the complaint it has wide powers for this purpose and, if possible, settle it

by its good offices. If a settlement is not possible, it may in certain circumstances institute criminal proceedings or, if that is not appropriate, it may refer the case to the Minister who may then refer it to a board of inquiry. If such a board finds that there has indeed been unlawful discrimination, it may order full compliance with the contravened provision of the Act and may also order rectification of the injury thereby caused and the payment of financial compensation for such injury, including financial compensation for injured feelings. A victim of unlawful discrimination may also pursue an ordinary claim for damages in the courts; these damages, too, may include damages for injured feelings.

54. In addition to these particular remedies for unlawful discrimination, the ordinary criminal law of course provides penal sanctions for offences such as racial harassment and racial intimidation and for the offences (described more specifically above) involving the stirring up of racial hostility or ill-will.

Promotion of good race relations

55. In the field of the positive promotion of good race relations, the Bermuda Government, either directly or through various public bodies, organizes, sponsors or encourages a number of programmes and events aimed at combating racial discrimination and racial prejudices and at enhancing understanding and goodwill among different racial and ethnic groups. For example, the Human Rights Commission, in partnership with Amnesty International, hosts special programmes for schools on 10 December each year to celebrate the Universal Declaration of Human Rights. Similarly, but in this case in partnership with CURE, it hosts public programmes on 21 March each year to celebrate the International Day for the Elimination of Racial Discrimination. The Department of Cultural Affairs hosts a programme each year to commemorate Emancipation Day (1 August) and it also sponsors island-wide events in May of each year in celebration of Bermuda's divers heritage. In the non-governmental field, Amnesty International, the National Association for Reconciliation and the organization known as "Beyond Barriers" are active in the community with programmes of their own to combat racial discrimination and to promote good community relations.

Q. (c) *Can statistics be provided for cases of harassment, domestic violence and rape - do they all constitute offences? Has there been an increase in the number of cases of domestic violence*?

Racial harassment

56. There have so far been only three recorded cases of racial harassment. These all occurred in 1999.

Domestic violence

57. Domestic violence is not recognized as a separate offence in the law of Bermuda. Most cases of what may be regarded as domestic violence would, of course, involve the commission of some form of assault or, in some instances, a more serious criminal offence and would be classified as such. But they are not classified as cases of "domestic violence" and no relevant statistics are therefore available.

Rape

58. Rape no longer exists as a separate offence in the law of Bermuda. Cases which would formerly have been classified as cases of "rape" now fall into the general classification of "sexual assault". In 1999 there were 42 cases of sexual assault, in 2000 there were 35 cases and in 2001 there were 38 cases. But it is not possible to identify which of these cases might, under the previous law, have been treated as cases of rape.

2. Virgin Islands

Q. (a) *What measures have been taken to combat discrimination? If the bill was approved, can statistics be provided regarding its implementation*?

59. The bill referred to in paragraph 34 of the fourth/fifth report was indeed enacted as the Anti Discrimination Act 2001. However, it has not yet been brought into force and there are therefore no statistics, as yet, relating to its implementation.

Q. (b) *Please confirm whether the difference between men and women in connection with acquiring Belonger status has been removed*.

60. It can be confirmed that this difference was removed by the Virgin Islands (Constitution) (Amendment) Order 2000.

Q. (c) *[Is there] segregation in prisons between remand and convicted prisoners, adult and juvenile and male and female prisoner*?

61. It can be confirmed that there is proper segregation between remand and convicted prisoners, juvenile and adult prisoners and male and female prisoners.

Q. (d) *Have all differences between legitimate and illegitimate children been removed? In which cases do illegitimate children born within the territory acquire Belonger status*?

62. The previous distinction between legitimate and illegitimate children with respect to the acquisition of Belonger status has now been removed by the Virgin Islands (Constitution) (Amendment) Order 2000. Some other disadvantages of illegitimate birth, deriving from the common law, have been removed by the Legitimacy Act (Cap. 271 of the Revised Laws of the British Virgin Islands). In particular, this Act provides for a person who was born illegitimate to be legitimized by the subsequent marriage of his or her parents. But a person who was born illegitimate and who is not legitimated in this way remains subject to certain disabilities deriving from common law, in particular those that relate to inheritance of property.

3. Cayman Islands

Q. (a) *What are the problems regarding the implementation of the Covenant in the Islands*?

63. The Cayman Islands Government are not aware of any problems regarding the

implementation of the Covenant in the Territory other than as indicated from time to time in the periodic reports. If and when such problems arise in the future, the Cayman Islands Government will of course endeavour to ensure that they are resolved in ways that fully respect the relevant provisions of the Covenant.

Q. (b) *When a deportation order is made against a resident who may forfeit his/her Caymanian status, can such a person appeal and before whom*?

64. As was explained in paragraph 72 of the fourth/fifth periodic report, no deportation order can be made against a person who possesses Caymanian status. Nor can such an order be made against a non Caymanian who has been granted by the Immigration Board, and still enjoys, the right to reside permanently in the Islands. However, as was also so explained, if a person who possesses Caymanian status by grant from the Immigration Board (as distinct from by birth or descent) is convicted of a criminal offence in certain circumstances, the court which convicted him/her may recommend to the Immigration Board that it should consider ordering that he/she should forfeit Caymanian status; and if the Board, in its discretion, acts on that recommendation, he/she will then lose the previous immunity from deportation. Similarly, a person to whom the Immigration Board has granted the right to reside permanently in the Islands may, in certain limited circumstances (also specified in paragraph 72 of the fourth/fifth report), be deprived of that right by the Board in its discretion and, if that happens, he/she will then lose previous immunity from deportation. In neither case, however, is a deportation order the automatic consequence of the Immigration Board's depriving a person of Caymanian status or the right to reside permanently in the Islands. Deportation orders are made not by the Board but by the Governor in Council and are made only in the circumstances described in paragraph 73 of the fourth/fifth report. The Immigration Law does not provide for a formal right of appeal against a deportation order but representations may always be made by or on behalf of the person concerned and the Immigration Law does permit the Governor in Council to revoke, vary or modify an order which has been made.

Q. (c) *May an employed person's residence permit be revoked on account of the reasons indicated in the report, i.e. becoming destitute or having engaged in subversive activity and, in the latter case, what is the meaning of "to engage in subversive activity"*?

65. This question appears, with respect, to be based on a misunderstanding of the system which operates under the Immigration Law: there is no such thing, under that Law, "as an employed person's residence permit".

66. In essence, the position as regards the relationship between a person's immigration status and his right to engage in employment in the Cayman Islands is as follows. There are of course no restrictions on that right in the case of a person who possesses Caymanian status. There are similarly no such restrictions applicable to a non Caymanian who enjoys the right of permanent residence. Any other non Caymanian who wishes to engage in employment while in the Islands must obtain a work permit. Any such work permit is revocable and the law does not specify or limit the grounds upon which this may be done. However, it is, in practice, only in rare cases that the question of revoking a work permit arises for decision, and care is then taken to ensure that the rules of natural justice are respected.

67. The passage in the fourth/fifth report that was cited in the question and that referred to action against a person on grounds of his/her having become destitute or having engaged in subversive activities was a reference not to the revocation of a residence permit or a work permit but to a decision to deprive a person (whether or not engaged in employment) of the right to permanent residence. As for the meaning of the term "subversive activities", it is suggested that, while its applicability in any given case must depend on the precise facts of that case, it would typically embrace activities that were aimed at the overthrow of the lawful government of the Territory, including activities that were seditious or treasonable.

Q. (d) *Is it an offence to remain illegally in the Islands? What is the punishment for that offence*?

68. A person who remains unlawfully in the Cayman Islands is guilty of an offence and is liable, on conviction for a first offence, to a fine of up to $2,000 and/or to imprisonment for up to six months. For a second or subsequent offence, the penalty is a fine of up to $4,000 and/or imprisonment for up to 12 months.

4. Gibraltar

Q. (a) *What standing does the Covenant have in Gibraltar*?

69. The Covenant has the same standing in Gibraltar as it has in other Overseas Territories and indeed in the United Kingdom's metropolitan territory itself. That is to say, it is recognized and respected as enunciating rights and obligations under international law that must be scrupulously observed and, in appropriate cases, positively implemented by domestic legislation and/or administrative policies and practices. However, the Covenant does not itself have the force of law in the domestic legal order and cannot be invoked as such in the municipal courts (except as a possibly relevant factor in the resolution of an ambiguity in domestic law). See also what is said on this topic in paragraphs 34 39 above, under "Incorporation". Gibraltar is, of course, one of the Overseas Territories whose Constitution contains a bill of rights.

Q. (b) *Is there discrimination on grounds of nationality against Spanish citizens as regards purchasing property, acquiring permanent residency, inheriting immovable assets or voting and being elected*?

70. There is no discrimination on grounds of nationality against Spanish citizens as regards purchasing property or inheriting property, whether movable or immovable.

71. Under the Immigration Control (European Economic Area) Ordinance 2000, Spanish citizens are treated equally with other European Union nationals as regards the right to reside in Gibraltar and the right to remain in Gibraltar indefinitely. The provisions of that Ordinance relating to the grant of certificates of permanent residence (i.e. to the children and husbands of Gibraltarian women) do not impose any nationality qualification.

72. So far as concern voting for and being elected to the House of Assembly, only British

nationals are qualified. But there is no discrimination against Spanish nationals as such (i.e. as distinct from other non British nationals).

Q. (c) *In what circumstances may non Gibraltarians lawfully present in Gibraltar have their residence permits cancelled and be deported, and is there any legal recourse against such a measure? Moreover, can statistics be provided in respect of recent deportation orders and decisions in cases in which the right of appeal to the Governor, mentioned in the report, has been exercised*?

73. In relation to this question, a distinction must be drawn between persons who are European Union nationals and persons who are not. European Union nationals who are "qualified persons", as defined in the Immigration Control (European Economic Area) Ordinance 2000 in conformity with the requirements of European Union law, (and also family members of a "qualified person") may have their residence permits (or, as the case may be, their residence documents) revoked either on grounds of public policy, public security or public health (again as defined and determined in conformity with European Union law), or if they cease to be "qualified persons" (or, as the case may be, family members of a "qualified person"). European nationals who are not "qualified persons" but who do not need residence permits in order to reside as seasonal workers or workers employed for less than six months may also be required to leave Gibraltar either on grounds of public policy, public security or public health or if they cease to be such workers.

74. Persons who are not European Union nationals may be declared by the Principal Immigration Officer to be prohibited immigrants, or may have their residence permits cancelled by him, on a wide variety of grounds and may then be removed from Gibraltar by order of the Governor or of the Magistrates Court (in the latter case with a right of appeal to a higher court). The Governor may also order the removal of a person on the recommendation of a court by which he has been convicted of a criminal offence in certain circumstances. A person who has been declared a prohibited immigrant or whose residence permit has been cancelled may appeal to the Governor against that declaration or cancellation. There have been no cases in the past five years in which a person lawfully resident in Gibraltar has appealed to the Governor against such a decision.

5. Montserrat

Q. (a) *Was a state of emergency declared as a result of volcanic eruptions and, if so, what rights under the Covenant were suspended*?

75. It was indeed necessary, at the height of the volcanic emergency, for the Governor of Montserrat, acting in consultation with the Chief Minister, to make various orders under his domestic emergency powers to speed through urgent legislation that was required to deal with the immediate situation. At no time, however, was any provision of the Constitution suspended nor was there any derogation from any of the provisions of the Bill of Rights which the Constitution contains. Nor was it necessary to give notice of derogation under any international human rights instrument, e.g. the Covenant or the European Convention on Human Rights.

Q. (b) *What is the scope of the rights under the Covenant and what does "to the fullest extent possible" mean in respect of the observance of the rights mentioned in the report*?

76. As explained above, at no time during the volcanic eruption crisis (which still exists) has any provision of the Bill of Rights contained in the Constitution been suspended or derogated from, nor has there been any derogation from or failure to respect any of the provisions of the Covenant. The phrase "to the fullest extent possible" was intended to refer to the fact that, at various times, restrictions have had to be imposed, in the interests of public safety and public health, on entry into areas considered to be unsafe. This is expected to continue to be the case for the foreseeable future. The Committee will also recall that the destruction of Montserrat's prison in the early phase of the volcanic eruptions caused problems in relation to the provision of suitable accommodation for prisoners, and in particular in relation to the segregation of different categories of prisoners, but that these problems are now being overcome.

6. Pitcairn

Q. *Please explain what the elders of the Church are and whether women are admitted*.

77. The population of Pitcairn largely adheres to the Seventh Day Adventist Church. The organization of the individual churches belonging to the Seventh Day Adventist Church varies from place to place according to local circumstances, including the size of the congregation. In addition (in most cases) to a minister or pastor, there are usually a number of elders (who may be of either sex and who often include a Head Elder) and a number of deacons and deaconesses. Both elders and deacons and deaconesses are chosen by their own local congregation and are ordained. The primary function of the elders, who are responsible to their local church, is to help care for the spiritual welfare of the congregation, and their duties may include preaching, visitation, care of the sick, admonition of the wayward, etc. Deacons and deaconesses are more concerned with the practical working of their local church. It will be seen that there is no impediment to a woman becoming an elder of her church, though this does not appear to have happened in Pitcairn in recent years. In fact, because of Pitcairn's very small population and even smaller current practising membership of the congregation, its local church has recently been given the status only of a "company" and the local organization has been accordingly simplified: there are at present no elders as such, but there is a "Company Leader" (equivalent to a Head Elder) and a Treasurer, and local authority in relation to the church is at present largely exercisable by the Pastor acting in conjunction with the parent Union of the Seventh Day Adventist Church.

7. St. Helena

Q. *Can statistics illustrating cases of racial discrimination be provided, and is it punishable as an offence in the same way as racial harassment and racial intimidation*?

78. Under St. Helena's Race Relations Ordinance 1997, it is a criminal offence to discriminate on racial grounds in any of the ways specified for that purpose by the Ordinance. The penalty prescribed for such an offence is a fine not exceeding ?500. Happily, however, there have been no cases in which it has been necessary to prosecute any person for such an

offence.

8. Turks and Caicos Islands

Q. (a) *Specific measures to combat discrimination. Do laws exist to prohibit racial discrimination and, if so, could an example be given of their implementation*?

79. The core of the measures currently in force in the Turks and Caicos Islands to prevent or discourage racial discrimination, and to provide effective redress for any discrimination that may occur, is to be found in the relevant provisions of the "Bill of Rights" in the Constitution of the territory. These provisions relate not only to discriminatory laws and discriminatory action committed by persons acting under the authority of any law or by public officers or public authorities but also to discrimination by private persons or bodies in respect of places to which the general public has access - that is to say, shops, hotels, restaurants, eating houses, licensed premises, places of entertainment or places of resort. The Committee will remember that the Constitution gives very wide powers to the courts of the territory to remedy any breach or apprehended breach of the provisions of the "Bill of Rights". In addition to these provisions in the Constitution, the Government of the Turks and Caicos Islands has for some time been contemplating the introduction of legislation dealing more generally with racial discrimination by private persons or bodies. The thinking has been that the United Kingdom's Race Relations Act 1976 (as amended) may serve as an appropriate model in its essential features, and this is still likely to be the case. But the current assessment is that that Act would need adaptation in a number of respects to fit it to the particular circumstances of the Turks and Caicos Islands and that significant further work is required for this purpose. That work is being pursued. It may be added that the competent authorities of the territory are of the view that, even in the absence of specific legislation of this kind, the provisions of Employment Ordinance relating to "unfair dismissal" could be invoked to provide a remedy in the case of a dismissal which was racially motivated.

Q. (b) *Are marriage gratuities still awarded to female public officers and not to male public officers*?

80. It remains the position that, as stated in paragraph 183 of the fourth/fifth report, General Orders provide for the payment of a marriage gratuity to female public officers but not to male public officers. However, it is no longer the position that female officers are required to retire on marriage. Moreover, marriage gratuities are awarded only if the officer in question resigns from the public service on marriage (or intended marriage) to a foreign national and intends to relocate to her husband's country. The last previous occasion when such a gratuity was in fact paid was in July 1985.

D. Other points

81. There are two other points arising from the Committee's concluding observations which, though the Committee has not asked for an early response, it seems helpful to deal with now.

1. Turks and Caicos Islands - death penalty

82. In paragraph 37 of the concluding observations the Committee expressed concern at the retention of capital punishment for treason and piracy in the Turks and Caicos Islands and urged that it should be abolished.

83. As was explained to the Committee during the oral examination of the fourth/fifth report, the (purely nominal) retention of the death penalty for treason and piracy in the Turks and Caicos Islands is, in effect, an historical curiosity which is now being remedied. It results from fact that the relevant statutory provision is contained in an old Act of the United Kingdom Parliament which originally applied to The Bahamas at a time when the Turks and Caicos Islands constituted a dependency of The Bahamas (as they did for much of the eighteenth and nineteenth centuries) and which, having automatically continued to apply as part of the law of the Turks and Caicos Islands after they were separated from The Bahamas in the mid nineteenth century, has technically remained in force there ever since. However, the Committee can be assured that the necessary legislative processes to update the law of the Territory by expressly replacing the death penalty for treason and piracy by a penalty of life imprisonment are currently in train and are expected to be completed in the very near future. In the meantime, there is of course no question of the death penalty actually being carried out.

84. It is therefore now the position in practice, and will very shortly be the position in strict law also, that the death penalty has been abolished for all offences in all Overseas Territories.

2. <u>British Indian Overseas Territory (BIOT)</u>

85. With respect, the Committee's comment and recommendation in paragraph 38 of the concluding observations seem to rest on a misunderstanding of the explanation which the delegation gave in reply to a factual inquiry by Mr. Scheinin. The present response therefore seeks to clarify the position.

86. The delegation did indeed confirm to Mr. Scheinin that the High Court in England had recently held that an Ordinance of BIOT (the Immigration Ordinance 1971) which had the effect of excluding the llois from any part of the Territory unless in possession of a permit to enter was, to that extent, unlawful. The delegation also confirmed that the United Kingdom Government accepted that decision. The 1971 Ordinance had therefore already been replaced by a new Ordinance which recognized that the llois had the right of unrestricted entry to any part of the Territory except (for defence and security reasons) Diego Garcia - for entry to which a permit was still required.

87. It is also correct that the delegation explained that the fact that there was no resident population in BIOT meant, in the opinion of the United Kingdom, that the Covenant could have no practical relevance to the Territory. The delegation went on to note that that position might change in the future if, in the light of certain feasibility studies which the United Kingdom had commissioned, it was found that resettlement was viable and if a settled population was then again established. But, it was made clear, that was not the situation which currently fell to be considered.

88. However, it is not correct that the delegation gave the absence of a settled population as the reason why the Covenant does not apply to BIOT. On the contrary, when explaining the facts of the situation, the delegation expressly drew the Committee's attention to the crucial fact that when, in 1976, the United Kingdom ratified the Covenant in respect of itself and certain of its Overseas Territories, it did not ratify it in respect of BIOT. It is for this reason, and irrespective of - but of course in full consistency with - the practical considerations which the delegation explained, and which have again been explained above, that the Covenant does not apply, and never has applied, to BIOT. Accordingly, and while taking respectful note of the Committee's suggestions in paragraph 38 of the concluding observations, the United Kingdom must again make clear that it is not bound in respect of BIOT by any of the obligations which arise from the Covenant, including any obligation to report to the Committee in respect of that Territory.

CCPR, CCPR/C/GBR/CO/6/Add.1 (2009)

Information received from the United Kingdom of Great Britain and Northern Ireland on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/GBR/CO/6)*

[11 August 2009]

Introduction

1. In paragraph 31 of its concluding observations (adopted on 18 July 2008) on the United Kingdom's sixth periodic report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on matters referred to in paragraphs 9, 12, 14 and 15 of the concluding observations. The information requested by the Committee is set out below. Information on the remainder of the issues raised by the Committee will, as the Committee has requested, be included in the United Kingdom's seventh periodic report.

Paragraph 9

2. The issue of how to address the legacy of Northern Ireland's violent past remains one of the Government's greatest challenges, and there are a range of measures in place to review unsolved deaths in Northern Ireland.

3. As the Committee is aware, public inquiries were established on 12 November 2004 to examine the deaths of Robert Hamill, Billy Wright and Rosemary Nelson and these inquiries are currently underway. Each inquiry is being conducted by an independent, impartial panel of three individuals chaired by a senior retired judge. Two of these three inquiries - the Robert Hamill and Billy Wright Inquiries - are being conducted under the Inquiries Act. They were originally established under other legislation but were converted to the Inquiries Act at the express request of the independent judges chairing them. The Government does not believe the fact that these two inquiries are taking place under the Inquiries Act should be a matter for concern.

4. The conduct and timing of these inquiries is a matter for the independent inquiry panels. The inquiries have taken longer than originally anticipated due to difficulties with the gathering and processing of evidence, including an increase in the volume and complexity of material they have had to analyse, and the extra work caused by legal challenges. The Billy Wright Inquiry's oral hearings concluded on 2 July 2009. The Rosemary Nelson Inquiry's oral hearings concluded on 24 June 2009. The Robert Hamill Inquiry began its oral hearings on 13 January 2009. Witness questioning is expected to last until the end of September 2009, with final oral and written submissions due to conclude by 18 December 2009. All three inquiries expect to produce their reports in 2010.

5. It should be noted that there remains a fourth public inquiry underway in relation to Northern Ireland. The Bloody Sunday Inquiry was established on 29 January 1998. Its remit is

to determine, so far as possible, the truth of what happened in Londonderry on 30 January 1972, when soldiers opened fire during a disturbance resulting in thirteen people being killed and another thirteen wounded, one of whom subsequently died. The Tribunal of the Inquiry is chaired by Lord Saville of Newdigate, supported by Mr Justice Hoyt (Canada) and Mr Justice Toohey (Australia). The Inquiry completed its public proceedings in November 2004 and the Tribunal are currently engaged in drawing up the report of their findings.

6. The Committee has previously asked about an inquiry into the death of Patrick Finucane. The UK Government announced in 2005 that such an inquiry would be set up under the new Inquiries Act. However, Mr Finucane's family made clear their opposition to an inquiry under this legislation and no inquiry has been established. The UK Government has always been clear that if there is to be statutory inquiry into Mr Finucane's death it would have to be held under the Inquiries Act. The UK Government is in correspondence with the Finucane family about the terms on which any inquiry might be established. The outcome of those discussions will be taken into account in deciding whether it remains in the public interest to proceed with an inquiry.

7. Notwithstanding discussions about a possible inquiry, it is the UK Government's view that the extensive Stevens III investigation into the murder of Patrick Finucane and the subsequent decisions on prosecution taken by the independent Director of Public Prosecutions (DPP(NI)) have provided a thorough and effective examination of Mr Finucane's death. The three independent inquiries conducted by Lord Stevens constitute one of the largest and most comprehensive police investigations ever undertaken in the United Kingdom. Lord Stevens amassed a huge amount of evidential material which resulted in over 10,000 pages worth of files being submitted to the DPP(NI) for consideration during the course of the Stevens III investigation. It was as a result of this investigation that Ken Barrett was found guilty of and prosecuted for the murder of Patrick Finucane in September 2004.

8. The investigation of Mr Finucane's death has been the subject of an application to the European Court of Human Rights, which in 2003 held that there had been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death. The UK Government notes that on 19 March 2009 the Committee of Ministers of the Council of Europe, which has been monitoring the steps taken by the UK Government to implement the Court's judgment, resolved to close the examination of this case with respect to individual measures (Interim Resolution CM/ResDH(2009)44[1]).

9. It should be noted that public inquiries are only one mechanism through which deaths attributable to the Troubles have been addressed in Northern Ireland. The Police Service of Northern Ireland's (PSNI) Historical Enquiries Team (HET) began its work in January 2006 and provides a thorough and independent re-examination of 3,268 deaths attributable to the Troubles committed between 1968 and 1998. HET has three aims:

- to assist in bringing a measure of resolution to those families of victims affected by deaths attributable to 'the Troubles';
- to re-examine all deaths attributable to 'the Troubles' and ensuring that all investigative and evidential opportunities are examined and exploited in a manner that satisfies the

PSNI's obligation of an 'Effective Investigation'. (Article 2, Code of Ethics for PSNI); and

- to do so in a way that commands the confidence of the wider community.

10. An HET review of a case is a five-step process involving the following stages:

- Collection
- Assessment
- Review
- Focussed Re-investigation
- Resolution

11. As at March 2009, 1,421 cases had been opened with 513 cases completed. The HET pledges to deal with families with honesty, trust and confidentiality. Providing such a 'family centred' approach is at the heart of the HET project, and the HET's primary aim is to address, as far as possible, all the unresolved concerns that families raise. Given the scale of its remit a prioritisation system for reviewing cases is necessary. In order to treat each case equally the HET allocate cases on a chronological basis, beginning with incidents which took place in 1968. There are a number of occasions, however, when it is necessary to depart from this chronological approach. These include previously opened investigations, humanitarian considerations, issues of serious public interest, and linked series of murders.

12. The HET works closely with the Office of the Police Ombudsman for Northern Ireland (OPONI). In cases where there are allegations about the actions of police officers, the HET refers them to OPONI and separate, parallel investigations are conducted. HET and the OPONI hold monthly strategic and tactical meetings. A Memorandum of Understanding has been adopted between the two parties and is subject to regular review. As at May 2009 the HET has referred 62 cases to OPONI.

13. An inquest is one mechanism which can contribute to the provision of an investigation into a death. The purpose of an inquest is to establish who the deceased was and how, when and where they died. It is for the coroner to determine the scope of the inquest and decide what material is relevant to the inquest.

14. In 2007 the NI Coroner reopened/recommenced a number of inquests as a result of a House of Lords judgment which confirmed that the Chief Constable has an ongoing duty to disclose information to the coroner. Twenty-two of these reopened inquests concern 32 deaths arising from the security situation during the Troubles (including deaths resulting from security force action).

15. Consideration is currently being given to how to deal with the legacy of Northern Ireland's violent past more generally. With this in mind, the Consultative Group on the Past was established in June 2007 to:

"consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years; and to make recommendations, as appropriate, on any steps that

might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the past."

16. This Group provided a platform for people to express their own views on how to address the violent legacy of the Troubles, which impacted on so many across all sections of society. Co-chaired by Lord Robin Eames and Denis Bradley, the Group brought together a range of people from across Northern Ireland. Former Finnish President Martti Ahtisaari and mediation expert Brian Currin acted as international advisers to the panel, offering impartial advice on any lessons that might be learned for Northern Ireland from their wide-ranging experience of addressing the aftermath of conflict in other countries.

17. During consultation the Group received a total of 245 written submissions, met with over 100 organisations and held seven public meetings across Northern Ireland. The Group launched their report on 28 January 2009, in Belfast.

18. The report has 31 recommendations. One proposal - that ?12,000 should be paid to the nearest surviving relative of everyone who died during the Troubles - provoked a considerable public response, with strong opposition from many people. On 25 February 2009, the Secretary of State for Northern Ireland noted that there was no consensus around the issue of the ?12,000 recognition payments, and made clear that the Government would not be taking these forward. He also noted that the other 30 recommendations deserved careful consideration and encouraged wider debate on these other proposals. As the Secretary of State was concerned that there had not yet been a thorough debate about the other recommendations in the Report, on 24 June he announced a public consultation on the Group's recommendations. The consultation invites everyone to study all of the recommendations carefully and share with the Government their views on each of them. The consultation period will run until 2 October 2009. Whatever the outcome of the consultation may be the Government will continue to support Northern Ireland on the path to reconciliation.

Paragraph 12

19. The UK Government will not remove a person where there are substantial grounds for believing there is a real risk of torture or other cruel, inhuman or degrading treatment or punishment. As an early signatory to a number of international human rights conventions and having incorporated the European Convention on Human Rights into domestic legislation, the United Kingdom is deeply conscious of its human rights obligations and is intent on being consistent with them.

20. The UK Government does not accept that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances and believes that, on a case by case basis, government to government assurances may be used in removal cases to ensure an individual's safety on return, particularly in the national security context. The seeking and obtaining of assurances does not automatically mean that the individual will be removed. It is only when all the information is assessed that a judgment is made as to whether or not the individual's removal would be consistent with our human rights' obligations.

21. While aware that the phrase "diplomatic assurances" is often used as a generic description, the United Kingdom is aware of the considerable variation in the particular practices operated by States under this heading. With regard to the United Kingdom's own practice, considerable care has been taken to conclude framework agreements with a number of countries which enable us to seek and obtain from the highest level of government assurances in the particular areas relevant to the individual whose deportation is being considered. For example, if it emerges in enquiries that the individual faces detention, criminal charges or trial on return, care is taken to ascertain precisely what the law of the country provides in these areas, how it operates in practice, what the standards are and exactly how all this will be applied to the individual in question. Appropriate monitoring of individuals returned is put in place to ensure compliance with the general and specific assurances entered into.

22. Deportation from the UK is subject to a statutory right of appeal to an independent Tribunal (the Asylum and immigration Tribunal) or, in certain cases such as where national security is of concern, the Special Immigration Appeals Commission, which is a superior court of record. The Tribunal may consider both the case both for removal of the individual and their safety on return. In February 2009 the House of Lords upheld the use of government to government assurances with Jordan and Algeria in their judgment in the cases of Othman (OO) and RB & U. In so doing the House of Lords was satisfied that the Special Immigration Appeals Commission had applied the correct legal tests in determining the adequacy of assurances with Algeria and Jordan and that it was open to the Commission to reach the factual conclusions it did. The Commission analysed the assurances with rigour and the leading judgments for each of those countries (in which the assurances were considered in detail) were each over 100 pages in length.

23. In addition to having in place a process with the governments of certain countries for the seeking of human rights' assurances, the United Kingdom has made arrangements in all existing agreements for the monitoring of the treatment received by any individuals deported and for adherence to the assurances provided. In some countries, monitoring will be carried out by an independent body appointed for this purpose. In other cases, this is done through the British Embassy in the country concerned.

Paragraph 14

24. The UK's human rights obligations are primarily territorial, owed by the government to the people of the UK. The UK, therefore, considers that the ICCPR applies within a state's territory. The UK considers that the Covenant could only have effect outside the territory of the UK in very exceptional circumstances. We are prepared to accept that the UK's obligations under the ICCPR could in principle apply to persons taken into custody by UK forces and held in military detention facilities outside the UK. However, any such decision would need to be made in the light of the specific circumstances and facts prevailing at the time.

25. We repeat our previous assurances to the Committee that we condemn all acts of abuse and have always treated any allegations of wrongdoing brought to our attention extremely seriously. We have already assured the Committee that police investigations are carried out

where there are any grounds to suspect that a criminal act has or might have been committed by service personnel, and/or where the rules of engagement have been breached. Where there is a case to answer, individuals will be prosecuted by Court Martial. The procedure at a Court Martial is broadly similar to a Crown Court and the proceedings are open to the public.

26. The Armed Forces are fully aware of their obligations under international law. They are given mandatory training which includes specific guidance on handling prisoners of war. The practical training now provided for the Army deploying on operations provides significantly better preparation in dealing with the detention of civilians than ever before. There are some failings that the Army has already recognised and taken specific action to rectify as part of its process of continuous professional development. Other UK personnel deploying to operational theatres who are likely to be involved in activities that require an understanding of these international obligations are also given appropriate guidance.

27. Reparation will be paid to victims or their families where there is a legal liability to do so resulting from the unlawful activities of any member of the UK armed forces. Claims for death and personal injury can be brought under UK common law and compensation may be payable for human right breaches under the Human Rights Act where that applies. Compensation may also be payable under UK criminal injuries compensation provisions where applicable. Details of our compensation payments can be found at this web link: http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/FinanceandProcurementPublications/Claims/ModClaimsAnnualReports.htm

Paragraph 15

28. The terrorist threat level in the UK is Substantial, where a terrorist attack is a strong possibility; and an attack might occur without further warning. This could happen at any time. Since July 2005 when British terrorists attacked the London transport system, murdering 52 people, there have been numerous plots against UK citizens, including in London and Glasgow in June 2007 and Exeter in May 2008.

29. The safety of the public is paramount and it is the responsibility of Government and security and law enforcement agencies to protect our citizens from the threats posed by terrorism. Chief Officers have reported the complexity in counter-terrorism investigations. This is in part due to the greater use of encrypted computers and mobile phones; the increasingly complex nature of terrorist networks that have to be investigated; and the increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad.

30. Suspects arrested under section 41 of the Terrorism Act 2000 can be detained for a maximum of 28 days before they must either be released or charged. The detention of all suspects after 48 hours must be approved by a judge.

31. The judge can approve further detention for up to 7 days at a time but may authorise a lesser period of further detention. The judge may, of course, not authorise any further detention in which case the suspect must be released. The judge can only approve further detention if

satisfied that:

(a) there are reasonable grounds for believing that further detention is necessary to obtain, analyse or preserve relevant evidence; and

(b) the investigation is being conducted diligently and expeditiously.

32. Terrorist suspects will therefore only be detained for more than 48 hours where this is determined to be necessary by an independent judge. The Crown Prosecution Service (CPS) has a policy of charging as soon as practicable. The timing of charging is something that is very closely monitored and discussed between the CPS and the investigator.

33. The suspect and their legal representative can make representations as part of the hearings for further detention. Applications for detention beyond 14 days are made by the CPS and heard by a High Court judge. The application for extension is a rigorous process. A CPS lawyer makes the application for extensions beyond 14 days and the Senior Investigating Officer is present. Defence solicitors are provided in advance of each application with a written document setting out the grounds for the application. The applications are usually strenuously opposed and can last several hours. The officer may be questioned vigorously by the defence solicitor about all aspects of the case.

34. In 2009 Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) carried out a detailed independent inspection of the Counter Terrorism Division of CPS Headquarters (report published on 16 April 2009). The report examined cases where there had been pre-charge detention. At least one of the cases involved detention beyond 14 days (Operation Seagram which related to the London/Glasgow bombings in 2006). In all cases there was clear evidence on the file that pre-charge detention had been properly monitored, reviewed and the application for extension was entirely appropriate.

35. Where the charging decision is to be made, the standard to be applied in reaching the charging decision will be the Full Test under the Code for Crown Prosecutors: namely (following a review of the evidential material provided) that there is enough evidence to provide a realistic prospect of conviction and that it is in the public interest to proceed.

36. In cases where it is determined that it would not be appropriate for the person to be released on bail after charge and where the full evidential material required for charge is not yet available but there is reason to believe it will be shortly, the Crown Prosecutor will assess the case against the Threshold Test and a review date for a Full Code Test agreed as part of an action plan.

37. This was an important independent assessment, and clearly showed that HMSPCSI felt that the CPS charge at the earliest possible moment based on the evidence at hand.

38. The latest Police statistics show that forty-six per cent of those arrested under section 41 of the Terrorism Act 2000 were held in pre-charge detention for under one day and 66% for under two days, after which they were charged, released or further alternative action was taken.

Since the maximum period of pre-charge detention was increased to 28 days with effect from 25 July 2006, 6 persons have been detained for the full period, of whom 3 were charged and 3 were released without charge.

39. It is also of note that a person arrested under section 41 of the 2000 Act is given as much information from the time of their arrest, as reasonably possible within the constraints of protecting and effectively conducting the ongoing investigation, about what it is they are alleged to have done.

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* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

1/ Adopted by the Committee of Ministers on 19 March 2009 at the 1051st meeting of the Ministers' Deputies

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Information received from the United Kingdom of Great Britain and Northern Ireland on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/GBR/CO/6)

[18 January 2011]

Allegations of delays of the public inquiry to examine the death of Billy Wright (para. 9)

1. The report of the Billy Wright Inquiry was published to Parliament on 14 September 2010, having been delivered to the Secretary of State for Northern Ireland the previous day. This was the earliest date on which the inquiry could have been published given parliamentary recess and the need to make extensive logistical arrangements both in London and Belfast. It was also the preferred date of the Inquiry.

Level of independence of the public inquiries from the Government (para. 9)

2. Each inquiry is being conducted by an independent, impartial panel of three individuals chaired by a senior retired judge. The Government will not receive the reports until the day before publication.

3. As noted in the original submission we provided to the Committee, the Government does not see the fact that two of the three inquiries are taking place under the 2005 Inquiries Act should be a matter for concern. Both Inquiries were established under earlier legislation but were converted into Inquiries Act 2005 inquiries at the request of the respective chairmen. This Act is now the primary means by which Parliament can establish statutory public inquiries, with previous inquiry legislation (1921 Act) having been repealed.

Measures adopted to ensure that all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel in detention facilities in Afghanistan and Iraq are investigated promptly and independently, and that those responsible are prosecuted and punished (para. 14); and reparation available to the victims of such violations

4. Whilst reserving the UK's position as to the extent to which the Covenant applies outside of the territory of the UK, the standards of conduct and physical treatment of prisoners required of UK forces are, and have always been, in accordance with relevant international law and UK domestic law, which applies to UK forces at all times, wherever in the world they are

serving, which explicitly forbid torture and inhuman and degrading treatment. The UK Armed Forces are given thorough mandatory training, which includes specific guidance on handling prisoners. All personnel must attend refresher training every year. Other UK personnel going to operational theatres are also given appropriate guidance on relevant international obligations.

5. The Armed Forces operate within Rules of Engagement to ensure their actions, including use of lethal force, comply with the Law of Armed Conflict, where applicable, or the English criminal law so far as actions taken in self defence. Investigations into fatal shooting incidents are carried out to ensure the actions of the Armed Forces were lawful.

6. All allegations of abuse are taken very seriously by the UK Ministry of Defence (MOD) and are investigated thoroughly. Where there is sufficient evidence, prosecution action will be taken against those allegedly responsible and, if found guilty, appropriate disciplinary action taken. If appropriate, arrangements will be made for complainants to be compensated. Although there have been instances of misconduct by members of the UK Armed Forces , only a tiny number of individuals have been shown to have fallen short of the very high standards expected.

Iraq

7. The Baha Mousa Inquiry was announced in 2008 by the then Secretary of State for Defence. Baha Mousa suffered ill-treatment and died whilst in British Army custody in Basra on 15 September 2003. There was a Court Martial, at which one soldier, Corporal Donald Payne, was found guilty of inhuman treatment. Following the Court Martial it was felt that a number of wider issues needed to be investigated more thoroughly. The Baha Mousa Inquiry is a statutory Public Inquiry set up under the Inquiries Act 2005; the Inquiry has powers to require the appearance of witnesses and the production of documents. The terms of reference require the Inquiry to investigate and report on the circumstances of Baha Mousa's death and the treatment of those detained with him, where responsibility lay for approving the practice of conditioning detainees in Iraq in 2003, and to make recommendations. The Army and MOD are cooperating fully with the Inquiry, which is ongoing.

8. The then Secretary of State announced on 2 October 2009 that a public inquiry would be held into allegations made following a fire-fight between British forces and Iraqi insurgents at a vehicle checkpoint in southern Iraq. It is alleged that Iraqi nationals were unlawfully killed at a British camp on 14/15 May 2004, and that five Iraqi nationals were ill-treated in the same camp following their detention and later at a detention facility between 15 May and 23 September 2004. This Inquiry (known as the Al-Sweady Inquiry) is being held under the Inquiries Act 2005 and started work on 1 December 2009. Its terms of reference require it to investigate and report on these allegations. While the MOD has never found any credible evidence to support the allegations, it recognises that the inquiry is necessary to provide the fullest possible investigation. The Army and MOD are fully cooperating with the Inquiry.

9. On 1 March 2010, the then Minister of State for the Armed Forces announced in Parliament that the MOD would establish the Iraq Historic Allegations Team (IHAT) to investigate allegations of abuse by members of the UK armed forces in Iraq relating to events alleged to have occurred between March 2003 and July 2009. The current Secretary of State for Defence has endorsed the continuation of this approach.

10. The IHAT will bring additional resource to the investigation of these allegations of abuse, with a view to establishing the facts around each of the allegations in a timely fashion. There will be a new case review function, an enhanced investigative capability and a separate Panel which will ensure that where a decision is taken that prosecution is not appropriate, information is passed to and considered by those responsible for decisions other than prosecution (such as compensation). IHAT's investigations will be governed by the Armed Forces Act 2006. The IHAT has been established and resourced on the basis of completing its investigations in approximately two years.

Afghanistan

11. The Royal Military Police (RMP) are responsible for investigating all allegations of ill-treatment or abuse made by Afghan nationals against UK Forces who are detained as a result of UK operations.

12. Any allegation of abuse by British personnel against detainees in Afghanistan made by detainees is reported to the RMP who launch a formal investigation into the circumstances surrounding the incident. Where the investigation concludes that criminal charges should be brought against individuals, they will be referred for prosecution by court martial.

Reparations

13. When compensation claims, including those relating to alleged mistreatment, are received, they are considered on the basis of whether or not the MOD has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. All such claims are investigated and assessed in order to determine whether members of the UK Armed Forces acting in the course of their official duties caused the alleged damage, injury or loss in question.

14. The MOD takes responsibility for, and settles, compensation claims, where there is a legal liability to do so. Such liability does not exist when actively engaging the enemy, but where UK Forces have caused injury or damage other than in the course of armed engagements, compensation will be paid wherever appropriate.

15. With the exception of death and serious injury cases, which are handled in the UK, the Area Claims Officer handles claims in the country in which they arise to speed up the process and ensure communication with local claimants.

Decisions to be rendered by Belfast courts on the legality of the use of extended detention without charge against terrorist suspects (para.15).

16. The Government is still awaiting the courts' decisions on this case.