

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

CCPR A/33/40 (1978)

184. The Committee considered the initial report (CCPR/C/1/Add.17) submitted by the United Kingdom at its 67th, 69th and 70th meetings on 30 and 31 January and 1 February 1978 (CCPR/C/SR.67, 69 and 70).

185. The report was introduced by the representative of the State party who expressed the hope that a supplementary report on his country's dependent territories and on the Isle of Man, Jersey and Guernsey would soon be completed and submitted to the Committee.

186. He drew attention to the fact that in the United Kingdom, which had no written constitution and where parliament had absolute power to enact and change any law, there was no code of rights but specific sets of reciprocal rights and duties and civil remedies or criminal prohibitions. His country's ability to ratify the Covenant, which did not in itself have the force of law in the United Kingdom, had rested upon the fact that the rights recognized in the Covenant were already guaranteed by the law, subject to the reservations and derogations which had been made upon signature or ratification. He pointed out that his country recognized no distinction between public law governing the actions of the State and private law governing relations between citizens. In addition, it had no separate code of administrative law, although there were arrangements for dealing with individual grievances against the administration through the office of the Parliamentary Commissioner for Administration and through commissioners who exercised similar functions in relation to the acts of local authorities and the National Health Service.

187. Members of the Committee expressed their appreciation for the comprehensive report submitted by the United Kingdom and for the introductory statement made by its representative.

188. With reference to the right to self-determination recognized in article 1 of the Covenant, the representative of the United Kingdom was asked what was actually being done to speed up the achievement of that right by the United Kingdom's remaining dependent territories and what the position of his Government would be in a case where a people expressed the desire to exercise that right but did not possess adequate resources to sustain independence. In the light of the statement made upon ratification by the United Kingdom Government indicating to which of its dependent territories all or part of the Covenant would or would not apply, the representative was asked whether that enumeration included all the dependent territories of the United Kingdom; and whether it was possible for the United Kingdom to exclude any such territories from the application of all or part of the Covenant.

189. Referring to article 2, paragraph 1, read together with article 25, subparagraph (a), of the Covenant, one member asked to what extent the constitutional system of the United Kingdom was compatible with those provisions, having regard to the fact that only persons of a certain class or birth could as of right be members of the upper chamber of parliament.

190. In other comments on article 2 of the Covenant, it was noted that, since in the United

Kingdom rules concerning human rights derived only from legislation and case law, the rights recognized in the Covenant might not be fully protected in view of the rather fragmentary character of case law. Clarification was requested on the statement in the report that United Kingdom law did not confer a specific right of action in respect of the violations of any basic rights or freedom as such. The representative was asked whether the Covenant had been publicized in the collection of statutes, whether an individual who claimed that his rights had been violated could invoke the provisions of the Covenant in defending himself in court, and what steps could be taken to ensure that the precedents created by the courts were in general in accordance with the spirit of the Covenant.

191. With reference to the statement in the report that the United Kingdom reserved the right to apply to members of the armed forces and persons detained in penal establishments such laws and procedures as might be deemed necessary for the preservation of custodial discipline, the representative was asked whether this reservation was meant to derogate also from article 7 of the Covenant.

192. With reference to articles 3 and 23 of the Covenant, information was requested on the situation in respect of equal rights of men and women; on whether existing legislation provided for complete reciprocity in the obligations of spouses and on the rights enjoyed by the foreign husband of a United Kingdom citizen as compared to those of the foreign wife of a United Kingdom citizen.

193. Some members requested clarification on the comments in the report concerning article 4 of the Covenant and, particularly, on the territorial application of the emergency measures, since the reference was not to Northern Ireland but to Northern Irish affairs; on the juridical considerations that had influenced the decision to make derogations under that article, and on whether the United Kingdom was considering the cancellation of those measures.

194. With reference to the comments in the report on article 7 of the Covenant, some members asked whether corporal punishment, particularly in public schools, was lawful or possible and, if it was, whether there were any restrictions on the use of force by teachers against pupils and whether such punishment was not at variance with article 24, paragraph 1, of the Covenant. In connection with other comments on the same article, the representative was asked whether English law provided that a person could not be subjected to medical or scientific experiments without his consent; whether the police code of conduct applied to military personnel who used force to quell disorders and whether there were any limitations on their activities in that regard; and how effective in practice was a police complaints tribunal which was run by the police itself.

195. In connection with article 8 of the Covenant, more information was sought on the statement in the report that "in cases of breach of contract the courts will not generally order specific performance" and whether there had, in fact, been cases in which the courts had ordered such performance, as well as on the practice which made it possible to require a convicted person to perform unpaid work for a specified period.

196. In comments on article 9 of the Covenant one member asked, with reference to a quotation in the report from the Magna Carta, whether United Kingdom law still provided for a system by

which a person could be judged by his peers. Clarification was requested on the statement in the report that “in general, an arrested person must be informed of the true ground of his arrest”, as well as on the cases in which a person could be taken into custody without a warrant. As regards the system of bail applied in the United Kingdom, the representative was asked whether a system which made the release of a person awaiting trial dependent upon the amount of money to which he had access might not be in contradiction with articles 14 and 26 of the Covenant.

197. A number of other questions were asked: was the remedy of habeas corpus in force in England, Scotland, Wales and Northern Ireland? Did a court when considering a writ of habeas corpus, examine the lawfulness of detention in every respect? In the case of detentions made under regulations stemming from the Mental Health Act, was the discretion of the Home Office subject to review by the court?

198. In respect of article 10 of the Covenant, information was requested on the rules which regulated the treatment of prisoners, in general, and solitary confinement, in particular, and on any specific changes that may have been introduced to ensure that inhuman interrogation techniques were no longer applied in Northern Ireland. Members also asked whether penalties under the Code of Discipline included corporal punishment, whether the right to counsel and the “rules of natural justice” were secured in cases where prisoners were punished for offences against discipline, and whether the procedure for punishment of prisoners for offences against discipline by the Governor of the Board of Visitors applied in cases of criminal offences committed in prison and, if it did, whether that was in conformity with article 14, paragraph 1, of the Covenant. One member expressed surprise that, according to the report, a 10-year-old child could be sentenced to detention.

199. With reference to article 12 of the Covenant and to the reservations made thereto by the United Kingdom, information was requested on any exceptions to the rights inscribed in that article in addition to those included in the reservations, and on whether there was any possibility of appeal against the application of the “immigration controls” in respect of persons who did not have the right of abode in the United Kingdom. Concern was expressed by some members in respect of some inhabitants of ex-dependent territories who still held British passports but did not seem to have absolute right of entry into the United Kingdom. The reservation to that effect was thought to be so sweeping that there was some doubt as to whether it might not be extended, as far as immigration was concerned, to the prohibition of discrimination as set out in articles 2 and 26 of the Covenant. Information was requested on the extent to which the Covenant’s provisions concerning the prohibition of racial discrimination were compiled with in the framework of the United Kingdom immigration policy.

200. As regards article 13 of the Covenant, clarification was sought on the meaning of the terms “public good” and “reasons of a political nature” used in the report in connection with the rules governing deportation of aliens from the United Kingdom. The representative of the United Kingdom was asked whether due account was taken of the interests of the person concerned before an order of expulsion was issued; and why it would be necessary to deport, against their wishes, the wife and children of a person who had already been deported.

201. In relation to article 14, information was requested on the procedure followed in the appointment of judges and on the measures taken to ensure the independence of judges. The following questions were asked: In what cases were trials not held in public? At what stage did the right of the detainee to counsel arise and what remedies were available in cases where a person who had been arrested was denied that right? Would an accused person be deprived of the possibility of calling the witnesses necessary for his effective defence if he did not possess sufficient financial resources? Commenting on the procedure for ex gratia payments referred to in the report under article 14, paragraph 6, some members, while requesting more information on the matter, expressed doubts as to whether such payments were enforceable and in conformity with the provisions of the Covenant.

202. With reference to article 15 of the Covenant, some members requested additional information on the competence of Parliament to enact ex post facto criminal legislation and on whether Parliament would be prepared to accept advice from the Government concerning the compatibility of such legislation with the Covenant.

203. As regards article 17 of the Covenant, the representative was asked whether the existing law provided for electronic surveillance and for searches without a warrant.

204. In respect of article 18, information was requested on the laws which provided for restrictions on the freedom of religion and on the remedies available to individuals who claimed that their freedom of religion had been violated.

205. In connection with articles 19 and 20, members asked whether the Act of 1819 concerning blasphemy and sedition was still in force; what was meant by “public feeling” in the statement that radio and television programmes should not contain any matter “offensive to public feeling”, and whether racist propaganda was prohibited.

206. It was noted that the Race Relations Act was enacted to ensure that the part of the population which was of immigrant origin was not discriminated against. The following questions were asked: would a person of such origin who was addressed in derogatory terms and subjected to degrading treatment receive the kind of protection to which citizens were entitled? How many cases reported as breaches of that Act were in fact prosecuted? If the legal provisions governing race relations were not effective, would the Government reconsider them with a view to improving the situation?

207. As regards the freedom of association provided for in article 22 of the Covenant, members asked whether a person was under any obligation to join a given association, whether a trade union could be set up in each enterprise and whether the management of an enterprise could object to its establishment and hamper its activities.

208. In connection with the right of every child to acquire a nationality, provided for in article 24 of the Covenant, it was noted that the citizenship of the father was a determining factor if the child was born abroad. Information was requested on the role played by the citizenship of the mother in such a case. Further details were sought on the protection of unborn children under United

Kingdom law.

209. With reference to article 25, it was asked whether members of the armed forces were entitled to take part in public life by voting and being elected to public office. Clarification was requested on the statement in the report that the Race Relations Act permitted the application of the nationality requirement contained in Civil Service Departmental Regulations.

210. In relation to article 26 of the Covenant, it was noted that protection of the law did not suffice to prevent discrimination in public life. More information was requested on the legislation of 1976 relating to the private sector, the reasons for its enactment and the results achieved through the application of its provisions. Referring to a statement in the report that “no person could be deprived of the equal protection of the law except by express legislation of Parliament”, some members asked whether any such legislation had ever been enacted.

211. Further details were requested on the steps being taken to enable minorities to develop their own culture.

212. The representative of the United Kingdom replied to those of the observations and questions summarized in the preceding paragraphs on which he could comment, at least in part, subject to the possibility of amplifying or modifying those comments later when the questions and observations made by members of the Committee had been fully studied in the United Kingdom. He stated that the report did not refer to any dependent territories and that a complete list of the territories, which would be covered in the supplementary report, would be supplied soon. The Covenant was applicable to the territories mentioned in his country’s declarations and reservations and to all others in respect of which the Covenant had been ratified. There was no reason why the application of particular provisions of the Covenant to particular territories could not be the subject of a reservation. The dependent territories were at various stages of constitutional development. Territories which desired independence but had been unable to meet their development needs received grants from his Government.

213. Replying to questions under article 2 of the Covenant, the representative of the reporting State pointed out that it was by a combination of existing law and any necessary amendments that the United Kingdom gave effect to its treaty obligations. An individual could therefore look to the law for the legal rules which protected his rights, and there was thus no need for a treaty as such to be applied as part of United Kingdom law. The text of the Covenant had been officially published in the United Kingdom but no claims in court could be based on its provisions. Referring to questions concerning reservations entered into by his country with regard to article 2 of the Covenant, he said that existing system of military justice contained considerable safeguards to protect the rights of individual servicemen and there should be no conflict, other than on points of detail, between the relevant provisions of the Covenant and the Code of Discipline; the same applied to the Code of Prison Discipline and both codes were subject to periodic review by Parliament.

214. In connection with article 4 of the Covenant, he stated that, because of the situation in Northern Ireland, which threatened the life of the nation, the United Kingdom availed itself of the

right of derogation provided for in that article. He explained in detail the reasons why his Government felt it necessary to reserve the right to derogate from the provisions of articles 9, 10, 12, 17, 19, 21 and 22 of the Covenant.

215. As regards article 7 of the Covenant, he said that no one could be subjected to medical or scientific experiments without his consent. The use of physical correction of children, whether in public or private schools, was not yet illegal in his country, though a teacher (or a parent) could be sued on behalf of the child if excessive force was used. Replying to a question concerning the Police Complaints Board, he said that the Board, which was in every sense independent of the police, was established to make it possible for a complaint against the police to appeal to a completely independent body.

216. Referring to the community service order mentioned in connection with article 8 of the Covenant, he pointed out that, under such an order, a person who had committed an offence could be required, if he so agreed, to give a certain number of hours of unpaid work to the community. That method was not part of the prison regime, and could not be applied to persons in custody.

217. Replying to questions under article 9 of the Covenant, the representative pointed out that the expression "lawful judgement of his peers" meant a judgement by the equals of the accused person and that it was now implemented by the system of trial by jury which was still applicable in the more serious cases. Minor cases which represented the majority of criminal charges were dealt with by law, unpaid magistrates drawn from all parts of society. As regards arrests without a warrant, he indicated that police officers could resort to them only in respect of serious offences, described by the law as "arrestable" offences, and certain other offences expressly specified in particular statutes. The bail system was meant to guarantee that the defendant would appear and the question of payment only arose if he failed to do so or if he was likely to leave the country. The financial means of those concerned were taken into account in fixing the amount. With regard to applications for a writ of habeas corpus, the person having recourse to such procedure relied on the fact that being kept in custody was illegal except for specified reasons, the existence or absence of which the court would have to consider. He stressed that the habeas corpus procedure or its equivalent was available in Northern Ireland as in any other part of the United Kingdom. As for appeals against detention in a psychiatric hospital, the usual procedure was to bring the matter before tribunals specially responsible for cases of mental health which could examine not merely the legality but also the medical desirability of the detention.

218. Replying to questions under article 10 of the Covenant, he said that the reference in the report was not to cellular confinement which could be authorized as a disciplinary measure for a limited period, but to the case where a prisoner could request to be removed from association with other prisoners for his own convenience, and it was that authority which could be given for one month and could be renewed. Children under 14 were placed not in prisons, but in community homes which were more like schools; later they might be moved to establishments within the prison system catering specifically for adolescents. In the case of children stricto sensu it was applied only for serious crimes, such as murder, when some form of detention was necessary in the interest of public safety to prevent a further offence.

219. In relation to the “immigration controls” practised in the United Kingdom in respect of some inhabitants of ex-dependent territories who still held British passports the representative gave a historical background to the status of such persons and to the rules governing their entry into the United Kingdom. He stated that article 12, paragraph 4, of the Covenant dealt with arbitrary acts and that the control in force was not arbitrary but governed by statute. To prevent misunderstanding, however, his country had, on ratifying the Covenant, entered a reservation on that article.

220. Referring to comments under article 13 of the Covenant, he stressed that the court could order deportation only in respect of offences punishable with imprisonment. A person, however, was liable to deportation for political reasons if he had a pernicious influence. The fact that the deportation of an individual brought about the deportation of his wife and children was governed by the concern to prevent the separation of families.

221. In answer to questions put to him under article 14 of the Covenant, the representative said that a person in police custody was allowed to telephone his solicitor or friends provided that no hindrance was reasonably likely to be caused to the processes of investigation or the administration of justice; and that even if the trial was held in camera, the sentence had to be pronounced in public, except in the case of juveniles, when only the press was allowed to be present. With regard to persons who had been unjustly sentenced and subsequently exonerated, the compensation from public funds was made ex gratia and not as of right. However, it was considered that arrangements for assessing compensation were such that United Kingdom practice did in substance give effect to the spirit of the Covenant.

222. Responding to questions under article 17 of the Covenant, he said that no law had yet been enacted prohibiting the use of electronic equipment for the surveillance of the private lives of persons.

223. With regard to questions under articles 19 and 20 of the Covenant, the representative pointed out that control was exercised over radio and television programmes containing matter “offensive to public feeling”, such as broadcasts of an obscene nature. In that connection, he said that the use of abusive language was not punishable by law unless it involved incitement to racial hatred, defamatory remarks or insults likely to cause a breach of the peace. A decision could be made only on the facts of a particular case.

224. Replying to questions under article 3, 23 and 24 of the Covenant, he pointed out that a woman who had married a British subject could acquire the nationality of her husband on application, but that men who had married women of British nationality could acquire British nationality only by registration or naturalization. On the other hand, the mother, unlike the father, could not transmit her nationality to her children, that approach being motivated by a concern to avoid too many cases of dual nationality.

225. In response to a question under article 26 of the Covenant, he pointed out that there was no recent example of an Act of Parliament expressly amending the constitutional principle of equal protection of the law. As regards the rights of minorities provided for in article 27, he said that

steps had been taken to overcome problems arising from the recent arrival in his country of minorities with different cultures and languages, by increasing the budget of local authorities to enable them to increase the number of teachers in schools and by providing assistance to voluntary organizations.

226. The representative of the United Kingdom finally reiterated his earlier statement that a supplementary report on dependent territories would be transmitted to the Committee which would also receive further information on the questions raised during the discussion.

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228. At its 147th, 148th and 149th meetings, held on 25 and 26 April 1979 (CCPR/C/SR.147, 148 and 149), the Committee continued its consideration of the initial report of the United Kingdom (CCPR/C/1/Add.17) ^{9/} and the supplementary report containing additional information (CCPR/C/1/Add.35) submitted in reply to the questions which had been put by the Committee during the consideration of the initial report at the 69th and 70th meetings. The Committee also considered the third part of the initial report concerning the Channel Islands and the Isle of Man reproduced in document CCPR/C/1/Add.39.

229. Several members made comments and put questions concerning the implementation of the Covenant in the United Kingdom, particularly in respect of equality of rights and the commitment undertaken by States parties in accordance with article 2 of the Covenant to respect and to ensure to all individuals in their territories the rights recognized in the Covenant without distinction of any kind. Noting that there was a category of citizens in the United Kingdom who by virtue of their birth had an absolute right to become members of the House of Lords and that, in connection with nominations to certain posts, there were restrictions based on the nationality not only of the candidates but also parents of candidates, members asked how could that be reconciled with the provisions of article 25 of the Covenant which stipulated that citizens were entitled on equal terms to have access to all political bodies and to participate in public affairs without any distinction based, *inter alia*, on birth. In this connection one member noted that although there was no statute law in the matter, Governments in the United Kingdom had always been formed on a party basis whereby the political party winning the elections formed the Government from its members and thus the possibility of participating in public affairs was predicted on membership in either the Conservative or Labour Parties which did not seem to have major differences over the political and economic foundations of the system.

230. The question was repeatedly asked as to whether there were court decisions or specific laws which expressly provided against discrimination of any sort and for the absolute equality of rights enunciated in articles 2 and 3 of the Covenant, as in the absence of judicial decisions or legal provisions, it would be difficult for the Committee to ascertain the extent to which the provisions of those articles were being applied in the United Kingdom. In this connection, it was asked whether the United Kingdom Government contemplated a change in the existing rules regarding transmission of nationality by either parent. Stressing the relationship of his question to the independence of the judiciary provided for in article 14, one member asked whether a large part of the population was not excluded in practice by such factors as the costly educational process required to gain the ability to become a judge and whether women could become judges, particularly in the higher courts. With

^{9/} The initial report by the United Kingdom was considered by the Committee at its 67th, 69th and 70th meetings, on 30 and 31 January and 1 February 1978 respectively, see CCPR/C/SR.67, 69 and 70 and Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paras. 184-226.

reference to articles 2 and 25 of the Covenant, it was also noted that members of the armed forces could not participate in the conduct of political affairs and the question was asked whether there were others who could not do so because of their official status.

231. The representative of the United Kingdom explained the limited role which the House of Lords played in the constitutional structure of the United Kingdom. It had, he said, for centuries been an inherent part of the British constitutional structure. The real avenue for political activity was the House of Commons and not the House of Lords. He emphasized that, when the United Kingdom had considered the possibility of ratifying the Covenant, the legislation and British constitutional organization had been studied closely and the conclusion had been reached that the situation was in keeping with the provisions of article 25 of the Covenant. He pointed out that in recent years the hereditary elements of the House of Lords had been diluted by the nomination of life peers designated by the crown on the recommendation of the Government. In reality, the existence of the House of Lords in no way affected the right of citizens to take part in the conduct of public affairs without discrimination of any kind. With regard to the question of access to public service, he stated that the requirements established in the nationality rule imposed no distinction based on birth or nationality, but were designed to ensure that those who became involved in public administration, in addition to being citizens, should have direct ties or reasonable links with the country. As regards the party system on which governments were based in the United Kingdom, he pointed out that in this country everyone enjoyed the freedom to form other political parties, such as the Communist Party, and that all parties had one common characteristic, because they performed their activities within the democratic system, but the policies they advocated were fundamentally different. In an election in which all parties were free to participate and use the mass media, it was evident that if a party did not win it was because the electorate did not wish to vote for it.

232. As to the question of discrimination he indicated that if a person considered that his rights set forth in article 25 of the Covenant had been violated he could invoke laws which specifically referred to discrimination on grounds of race, sex or marital status or could challenge the authority of the person who prevented him from exercising his right. Replying to other questions concerning equality of rights, he indicated that, although a small change had been made by administrative action affecting the Home Secretary's discretion, no legislation providing for equal transmission of nationality by matrilineal succession in the United Kingdom had yet been introduced. He said that most criminal cases were judge by lay persons but the judges of the higher courts were selected from the Bar. To become a member of the Bar, it was only necessary to pass the required examination. Moreover, access to universities was open to all and there was a wide system of State scholarships. He also stated that there were some women high-court judges; and that in addition to members of the armed forces, there was a limitation on participation in the conduct of political affairs on the part of members of the civil service or the diplomatic service. The criterion applied affected the fact that members of both services offered their services to the Government and not to the political party in power, and that they must therefore be able to act with absolute impartiality.

233. The fact that the United Kingdom did not have a written Constitution and that the Covenant was not part of its internal law continued to give rise to various comments and questions by

members of the Committee, especially since the reports submitted were found not to refer to the legislative texts and judicial decisions which the Government claimed reflected the rights and freedoms provided for in the Covenant. Some members thought it was not enough simply to maintain that the State proceeded on the assumption that its legal system was compatible with the Covenant. Members asked, therefore, the extent to which the Committee could determine whether the laws and court decisions were or were not compatible with the provisions of the Covenant and how an individual could enjoy the rights guaranteed by the Covenant if its provisions were not made part of the law of the land and could not be invoked in the courts. Given the complete independence enjoyed by the courts of the United Kingdom, members asked what guarantees there were for the application by the courts of the provisions of the Covenant and, if a court decision was reached in violation of those provisions, what direct and specific protection was available to an individual who was deprived of a right laid down in an international instrument ratified by his Government. Noting that in accordance with the principle of parliamentary supremacy the British Parliament could make any law and no court could question its action, one member asked how an effective remedy could be provided in the absence of a bill of rights, if a citizen who might wish to raise a question regarding a law would not be able to get a court to hold a legislative act invalid.

234. Replying to these comments and questions, the representative stated that while there was little or no written law in respect of constitutional organization, there were indeed written laws covering all the remaining areas and those laws had to be applied by the courts. As far as the implementation of the Covenant was concerned, he did not share the opinion that, under article 2, paragraph 2 of the Covenant, a State party had expressly to make the Covenant part of its internal law. What mattered was the treatment that people received and the way in which the law worked in practice. Anyone in the United Kingdom could consult the laws, observe the operation of the courts and ascertain in person or by reading the newspapers whether the rights and freedoms laid down in the Covenant were being respected. In this connection, he stated that the Parliament would enact a law to annul any judgement that may be rendered by a court in violation of the provisions of the Covenant. He contended that there was no way, short of introducing radical changes in the Constitution, in which a bill of rights could be enacted in such a way as to make those rights directly actionable. Moreover, there was no way of judging the constitutionality of an act of Parliament. In the last resort, the operation of the United Kingdom's Constitution depended on the fact that, to a great extent, it was unwritten and on the deep appreciation of their rights by the citizenry as a whole.

235. Members of the Committee expressed concern at the continued derogation of the United Kingdom under article 4, from articles 9, 10, 12, 17, 21 and 22 of the Covenant and requested clarification as to the reasons for and extent of such derogations, bearing in mind the conditions laid down in article 4. It was felt that it was the duty of the Committee to ascertain whether there was justification for each and every derogation under that article. They noted that the United Kingdom did not derogate from article 14 of the Covenant concerning the right to a fair trial, and that no derogation from article 7, prohibiting torture or degrading treatment, may be made under article 4. Nevertheless, according to one member, it was found by the Bennett Committee on Police Interrogation Procedure in Northern Ireland that in many cases people under interrogation had suffered injuries that were not self-inflicted and that, in an unusually large number of cases, convictions had been obtained as a result of confessions where it was not possible to have a

detailed record of the whole process of interrogation. It was asked whether, when the Bennett Committee had been appointed, its attention had been directed to the obligations of the United Kingdom under the Covenant and what was meant by the statement in the supplementary report that “obtaining evidence improperly [was] not in itself a criminal offence”, but simply an administrative breach sanctioned by disciplinary action, since the word improper might in this context encompass the use of torture. In this connexion, questions were asked as to what provisions existed to ensure that immigrants were not subject to indignities or to practices endangering their health and what criteria were used in the United Kingdom to determine mental illness for persons in custody. As regards everyone’s right to liberty and security of person, questions were asked on whether there were safeguards regarding the length of time detainees could be held for questioning; to what extent habeas corpus or equivalent remedies could be effective if, as was the case of Northern Ireland, persons could be arrested by the police without a warrant on the mere suspicion of being terrorists and detained for up to 72 hours; to what extent did the Police Complaints Board investigate complaints made by a detainee regarding injuries; and what was the proportion of cases taken to the Director of Public Prosecutions on which affirmative action, in the form of actual prosecution, had been taken. It was also asked, in relation to article 20 of the Covenant, whether a refusal on the part of the Attorney-General to give his consent for a prosecution on incitement to racial hatred had to be substantiated by fact and by law.

236. Replying to these comments and questions, the representative stated that there existed in his country a public emergency which threatened the life of the nation and resulted from an extraordinary attack aimed at bringing about forcible change in the relationship of Northern Ireland with the United Kingdom Government. He stated that the Bennett Committee, while acknowledging that it was sometimes necessary and lawfully permissible for police officers to restrain prisoners in order to defend themselves, had made a number of recommendations for improving the control and supervision of the interrogation process and that the Government accepted its broad conclusions and endorsed its approach. He pointed out that the statement in the report with regard to obtaining evidence improperly did not mean that the use of torture or assault for this purpose was not a criminal offence; that there were numerous ways of obtaining evidence improperly and that merely to do so was a breach of police orders rather than a criminal offence. As to the question of treatment of immigrants, he explained the health examination procedure for immigrants and stated that immigration officers were expressly instructed to carry out their duties without regard to the race, colour or religion of people seeking to enter the United Kingdom. He also explained the specific regulation of admission to mental hospitals, including the provision for a review of the condition of patients by independent mental health tribunals, and pointed to the various powers of the criminal courts in relation to accused persons deemed to be suffering from mental illness. As to the question of habeas corpus and the power to arrest without a warrant, he said that it would be an answer to a writ of habeas corpus that the defendant had exercised a statutory power but that the main objective of such a writ would be to inhibit the purported use of powers which did not exist; that the function of the Police Complaints Board was not to investigate complaints at the first instance, but rather to monitor the investigation of complaints; that whenever there was suspicion or evidence that a policeman was guilty of a criminal offence, the Director of Public Prosecutions became responsible for dealing with the matter and that in exercising his functions, the latter was an independent officer, free from political direction, although his conduct came within the over-all responsibility of the Attorney-General, a member of

the Government of the day.

237. With reference to freedom of expression and association provided for in articles 19 and 22 of the Covenant, members of the Committee requested further details concerning the procedures under which an individual or organization might complain of unfair treatment or misrepresentation in a broadcast and asked whether the procedures were judicial or administrative; whether the United Kingdom Government did not consider the very existence of a racist organization incompatible with the provisions of the Covenant; and whether trade unions were permitted to operate inside the factory in which their members worked. Referring to the closed-shop system, one member expressed the view that, even if this system could be reconciled with freedom of association, it made the individual dependent on his trade union and subject to abuses that could occur. He inquired as to whether a worker who opposed the illegal actions of a shop steward during a labour dispute would be dismissed from his job and, if so, what was the Government doing to prevent such abuses.

238. In his reply, the representative referred to the different procedures applied so far by the two bodies licensed to transmit public programmes in the United Kingdom concerning individual complaints against their programmes and referred to a recently published paper by his Government whereby a single complaints commission should be established for the entire public broadcasting system. As regards racist organizations, his Government viewed an organization not so much in the light of what it was as of what it did. If such an organization offended the law on racial hatred or discrimination, it would come within the terms of the law. Concerning trade unions, he stated that they did operate inside factories; that his Government did not consider the closed-shop system to be an infringement of the Covenant. The matter had, in fact, come before the European Commission of Human Rights and, if the Commission came to a different conclusion that would have to be taken into consideration or if the Conservative Party came to power, the system might eventually be modified.

239. With reference to the initial report submitted by the United Kingdom concerning the Channel Islands and the Isle of Man (CCPR/C/1/Add.39), the obligation of the United Kingdom under article 1 of the Covenant was of special concern to members of the Committee since it did not seem justifiable to speak of dependence 19 years after the colonial system had collapsed. Questions were asked on how the United Kingdom interpreted the requirement to “promote” the realization of the right to self-determination; why had so much time elapsed without those territories choosing independence; how had the people expressed their desire not to be independent; were there economic or military reasons for the United Kingdom to retain control of those islands, whether the territorial waters and resource margins of the Channel Islands and Isle of Man had been defined; and whether it was the United Kingdom or the Islands themselves that maintained sovereignty over them.

240. As regards article 3 of the Covenant, information was requested on the current status of women in the islands, including the right to vote and to run for election and on the extent to which the laws of the Channel Islands were at variance with the requirements of that article.

241. With reference to article 4 of the Covenant, it was asked whether the emergency powers had

been extended to the Island of Jersey as a result of a unilateral decision by the United Kingdom authorities or as a result of the express wishes of the Island concerned.

242. As regards the implementation of the provisions of articles 6, 7, 9, 10, 13, 14 and 17 of the Covenant questions were asked as to what crimes were sanctioned by the death penalty; whether the United Kingdom Government did not consider corporal punishment to be degrading treatment prohibited in accordance with article 7 of the Covenant; whether accused persons were segregated from convicted persons; whether accused juveniles were separated from adults and brought for adjudication as speedily as possible; whether members of the family were deported with the person concerned ;and whether the provisions concerning compensation for persons convicted of criminal offences but later exonerated were in conformity with the letter and spirit of article 14 of the Covenant.

243. In relation to the implementation of the right of peaceful assembly in Jersey, it was asked whether this right was still subject to the provisions of the law promulgated in 1797. As to the right of participation in the conduct of public affairs provided for in article 25 of the Covenant, it was asked whether this right was still governed in Jersey, *inter alia*, by the provisions of the law promulgated in 1897. With reference to the Isle of Man, information was requested on the manner of election of the Legislative Council and on the statutory exceptions to which eligibility for elections and membership of the House of Keys was subject.

244. In reply to questions under article 1 of the Covenant, the representative of the United Kingdom stated that the Islands had always enjoyed a considerable degree of independence; that the United Kingdom Government was not opposed in principle to a movement towards greater autonomy, provided its own responsibilities were not put at risk; that there was no request from the inhabitants of the Islands for complete independence; and that if there were great political movement for independence, the United Kingdom Government would consider it seriously.

245. With regard to the application of emergency laws in the Channel Islands, he pointed out that for emergencies of a civil nature, the local legislation applied. United Kingdom legislation on terrorism was applied in the Islands in consultation with their authorities.

246. Replying to questions under articles 6, 7, 9, 10, 13, 14 and 17 of the Covenant, he indicated that, whereas Guernsey had abolished the death penalty for murder, Jersey retained it for murder and the Isle of Man retained it for murder, treason and genocide; that corporal punishment still existed in the legislation of the Channel Islands, but, in the light of the findings of the European Court, it is unlikely that the judicial authorities of these Islands would impose such sentences any longer; that the main reason for deporting the family along with the individual concerned was to keep the family together; that his Government considered the practice concerning compensation for persons convicted of criminal offences but later exonerated to be in accord with the spirit of the Covenant and that it would see whether it could not be made to accord more closely with the letter also.

247. Replying to questions under article 22 and 25 of the Covenant, the representative pointed out that the right to peaceful assembly was guaranteed by customary law and that the application of the

law promulgated in Jersey in 1797 did not mean that the holding of public assemblies authorized by law and by custom was in any way restricted. The representative gave more details concerning the electoral system as applied in the Channel Islands and the Isle of Man.

CCPR A/34/40 (1979)

Dependent territories

300. The Committee considered the second part 11/ of the initial report submitted by the United Kingdom (CCPR/C/1/Add.37) at its 161st, 162nd and 164th meetings, on 6 and 7 August 1979 (CCPR/C/SR.161, 162 and 164). The report covered all the remaining dependent territories administered by the United Kingdom in respect of which the Covenant has been ratified.

301. In introducing the report the representative stated that document CCPR/C/1/Add.37 contained information prepared by the authorities of 11 different dependent territories for which the United Kingdom was responsible. Since 1945, when the Charter of the United Nations formally acknowledged the principle of self-determination for colonial peoples, successive British governments had given every help and encouragement to dependent territories wishing to become independent. To that end, it was committed to the creation of competent political and economic institutions in its dependencies. At the same time, it had been a consistent part of its policy that no territory should be forced into independence against the will of its population. That policy meant that, subject to the overriding responsibility for good Government, the United Kingdom Government did not seek to substitute its own judgement or instructions for the will and decisions of local Governments responsible to their own people. The United Kingdom Government considered it proper for the administering power not to interfere, so long as the decision was arrived at by the people of a territory through due democratic process, and as long as it did not offend the basic principles of the Covenant. The guiding principle of the Government of the United Kingdom was that the wishes of the people must be paramount.

302. Each of the territories for which information was provided had its own separate and distinct legal system. While there were common elements there were also many differences of detail and occasionally even of principle, depending on the wishes of the local authorities. The fact that the information in the report had been prepared by the authorities of the dependent territories themselves was consistent with the measures of autonomy which they enjoyed. The varying substance of the report reflected the widely varying circumstances of the territories themselves. Some were small territories where local institutions of Government were still very simple; others were larger territories effectively self-governing, with well developed democratic institutions and with the United Kingdom's responsibility under the Constitution now confined mainly to defence, security and

11/ The first and third parts of the initial report and the supplementary report to the first part which covered the United Kingdom and the Channel Islands and the Isle of Man respectively, were considered by the Committee at its 67th, 69th, 70th, 147th, 148th and 149th meetings (CCPR/C/SR.67, 69, 70, 147, 148, 149). See paras. 228-247 above and Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paras. 184-226. The Committee was informed of the text of a note received from the United Kingdom Mission at Geneva to the effect that the Gilbert Islands were to receive their independence on 12 July 1979,

and accordingly, from that date the United Kingdom Government would cease to have any responsibility for the Gilbert Islands.

external affairs. He finally pointed out that his delegation did not expect to be able to answer there and then all questions which required a detailed knowledge of the laws and practices of the 11 territories covered by the report. Therefore, as on past occasions, replies to questions which might have to be referred to the territories concerned would be submitted in writing at a later stage.

303. Members of the Committee expressed their appreciation for the comprehensiveness which characterized the report under consideration. Many questions centred on the implementation by the United Kingdom of the right of peoples to self-determination enshrined in article 1 of the Covenant. References were made to the statements in the report to the effect that it was the policy of the United Kingdom to grant independence to any territory which sought it but not to compel any into it and some territories had not expressed a wish for independence. Members asked how could people be compelled into independence; were there people who struggled against independence and if so, where and how. It was stressed that continued dependency was a continued violation of article 1 of the Covenant and of the relevant resolutions of the General Assembly under which the administering powers were duty-bound to take positive steps and effective measures to enable the people of these territories to decide their status and exercise their right to self-determination and to full control over their natural resources. In this respect, it was observed that the United Kingdom interpreted its obligations in a passive manner and did not make any effort to facilitate the exercise of the right of self-determination by the peoples of the territories.

A Green paper published in Bermuda in 1977 on the possible advantages and disadvantages of an eventual independence was mentioned as a typical example of that interpretation. Questions were asked on whether the Government consulted regularly and democratically the peoples of the dependent territories concerning their wish to attain independence or otherwise.

304. Referring to statements in the report, members asked which constitutional process had been followed to determine that the population in the Cayman Islands and Pitcairn did not wish any constitutional changes or to ascertain the true wishes in this respect of the peoples of the other dependent territories. More information was requested on the future prospects of Hong Kong and Gibraltar in view of their close links with China and Spain respectively, and of Belize and the Falkland Islands in view of the claims thereto by Guatemala and Argentina respectively. Referring to the British Indian Ocean Territory which he understood to be a new dependent territory created in 1965 and consisting of such islands as Diego Garcia and other parts of the Chagos Archipelago, one member expressed concern at the fate of the people who used to live there and asked whether these people had the right to return to the place of their birth; whether they had received compensation for their property when they were, as he understood, forcibly removed from their islands; and whether there were any actions before the courts in the United Kingdom relating to their rights. With regard to the people of Ocean Island who had been settled elsewhere, apparently against their will, and had initiated action in the United Kingdom for the restoration of their rights, it was asked whether that island formed part of the Gilbert Islands which had recently obtained independence; and whether the inhabitants had been consulted in this regard. Information was also requested on the status of the New Hebrides.

305. Noting that people had the inherent right not only to be aware of the resource margins around

their territory but also to have a say in the way those margins were exploited and that because of their geographical characteristics as islands, many dependent territories had important prospects for economic development, one member asked to what extent the interests of these peoples were taken into account by the United Kingdom in international forums such as the United Nations Conference on the Law of the Sea; whether anything was being done to make the people of the dependent territories aware of their rights; and who represented the territories in the event of a conflict between the rights of those people and the right of the United Kingdom with regard to the principles which ought to apply in the delimitation of resource margins.

306. As regards article 2 of the Covenant, it was pointed out by members of the Committee that in all the territories covered in the report the entire administrative and judicial structure depended on the power vested in the Governor of the Territory appointed by the Queen of England; that so long as the colonial structure persisted, the implementation of the Covenant must remain in doubt since it was clear that the peoples of these territories themselves had very little influence; and that the relevant Constitutional Orders did not fully correspond to the conception of the Covenant since they were much narrower in their impact and reflected a specific political model. In this connection, and with reference to a statement in the report concerning the British Virgin Islands, one member stated that it was of the highest importance that fundamental rights be written into the Constitutions of the dependent territories. He considered that it was the responsibility of the United Kingdom under the Covenant to ensure that these rights were given effect in law and not simply left to the discretion of the local legislative authorities because the international obligation lay with the United Kingdom as such and not with those territories. Questions were asked on what measures had been taken to ensure the wide publicity of the text of the Covenant in the dependent territories; and whether the expression “widely respected and protected” used in the report to describe the status of human rights in the Cayman Islands meant that they were not completely respected. Noting that the Covenant did not itself have the force of law in the territories, members asked whether it could nevertheless be invoked before the courts and which law prevailed in case of a conflict between the provisions of the Covenant and those of the domestic legislation. In this connection questions were asked as to whether the United Kingdom legislation applied automatically in the non-autonomous territories and what happened in the event of a conflict between local law and United Kingdom law. Referring to the statement in the report that the Cayman Islands were bound by the European Convention on Human Rights, members asked whether the European Convention was also applicable to the other dependent territories.

307. Noting that the Bermuda Constitution Order 1968 appeared to permit discrimination based on sex, that the report on the British Virgin Islands indicated that it was possible for individuals to bring action against officials and that such proceedings were regulated by the Crown-Proceedings Ordinances, members asked whether such actions were possible in all the territories, and if so, whether there were restrictions placed on litigants in terms of time and procedure and whether there were, in those proceedings, restrictions that did not exist in cases brought by one citizen against another.

308. With reference to article 3 of the Covenant, one member noted that the reports on most of the dependent territories were silent on its implementation. It was however also observed that the Bermuda Constitution Order 1968 appeared to permit discrimination based on sex. Information

was requested on the steps taken by the United Kingdom to ensure equality between men and women and on the number of women officials in the executive, legislative and judicial bodies of the territories; and the number of women doctors, professors and other professionals. The question was also asked as to whether women leaving or entering the territories were subjected to special restrictions and, if so, whether such control was conducted by the officials concerned on special instructions from the Government. In this connection, it was asked whether any distinction was made between citizens of the United Kingdom and those of the territories.

309. With respect to article 4 of the Covenant, it was noted that most reports of the territories did not make any reference to the implementation of this article. However, article 14 of the Constitution Ordinance 1968 of Bermuda contained provisions for time of war or emergency which seemed to be of a wider scope than those provided for in the Covenant, while article 16 of the Constitution of Gibraltar was rather vague in this regard. Questions were asked as to what were the effects of an emergency on fundamental rights and freedoms; whether these provisions had been applied to these two territories; and whether similar provisions existed in the other territories.

310. In respect of article 6 of the Covenant questions were asked on the rate of infant mortality in the territories as compared with the rate in the United Kingdom; and whether there was any prospect of the abolition of the death penalty in the territories. Clarification was requested regarding the length of what was described as detention “during Her Majesty’s pleasure”, which was stated in the report on Bermuda to be in lieu of the sentence of death pronounced on a person who was under 18 years of age. Referring to the report on the Turks and Caicos Islands, one member questioned whether setting the age of 16 as the minimum age for the imposition of the death penalty was consistent with the Covenant. It was noted that the reports on the British Virgin Islands, Cayman Islands, Gibraltar and Hong Kong contained information concerning the laws governing the crime of genocide. Questions were asked about the legislation concerning this crime in the other territories and about the crimes which were punishable by a death sentence.

311. In connection with article 7 of the Covenant, members of the Committee expressed their grave concern at the existence of corporal punishment in the British Virgin Islands, the Turks and Caicos Islands and Hong Kong. Since this kind of punishment no longer existed in the United Kingdom, members of the Committee wondered whether it should continue to be applied in the dependent territories. In this connection reference was made to the report on Gibraltar which described solitary confinement as one of the punishments that could be applied in that territory and whether this did not, in the view of the United Kingdom, constitute inhuman treatment. It was also asked whether the legislation in the territories provided for persons to be subjected without their free consent to medical or scientific experimentation; whether the immediate relatives were asked for their agreement and who took the final decision in this matter.

312. With regard to article 8 of the Covenant, the question was asked whether any cases of forced labour existed in the territories. Referring to the report on Pitcairn, one member enquired whether the public work referred to was paid; who decided whether work was public; for how long such work was performed; whether the length of time was left to the discretion of the administration; and what remedies were available in the event of dispute. It was noted that in the reports of Belize, Gibraltar and St. Helena it was stated that, in cases of breach of contract, the courts would not

generally order specific performance. Questions were asked as to whether there were exceptional cases in this regard; whether labour disputes were solved in accordance with the normal civil law or specific labour laws; and whether restrictions existed in the field of employment on the basis of race. The representative was also asked whether all the remnants of slavery had been abolished in the territories.

313. With reference to article 9 of the Covenant, it was observed that the Bermuda Constitution Order 1968 provided for the deprivation of liberty of a person for specific purposes, but it did not indicate what legal safeguards existed against the misuse of that provision. Referring to the paragraphs in the reports on Belize, the British Virgin Islands, Gibraltar and Hong Kong, which stated that, in general, an arrested person must be informed of the true ground of his arrest, information was asked about the exceptions in this respect. More information was sought concerning bail in some territories such as Belize, the British Virgin Islands, Gibraltar, Hong Kong and Pitcairn, in view of the financial implications it might have on the less privileged. The question was asked as to whether detention was under the control of the local police or that of the metropolitan Government.

314. More information was requested on the implementation in the dependent territories of article 10 of the Covenant. Referring to statements in the report concerning the arrangements that existed between the territories for the execution of sentence of imprisonment, some members asked whether such arrangements were also made between the United Kingdom and the territories, and if so what facilities were provided for family visits in view of the great distance between the prisoners and their relatives. Mention was also made of a statement in the report on Hong Kong to the effect that a convicted prisoner could be required to do useful work for not more than 10 hours a day and that minors could be sentenced to detention in a training centre for a period of six months to three years. The question was asked whether, in the view of the United Kingdom, this did not constitute a violation of articles 10 and 24 of the Covenant and, if so, whether the United Kingdom could not ask the governor of Hong Kong to bring about the necessary changes in this regard.

315. With reference to article 12 of the Covenant, clarification was requested on the reasons for the reservation to paragraph 4 of this article in respect of the Cayman Islands. It was also asked whether all persons residing in the dependent territories could live in the United Kingdom without the fulfilment of any formalities.

316. In respect of article 13 of the Covenant one member, referring to the report on the British Virgin Islands, asked the justification for the deportation of a person who was destitute. He also asked what was the justification for extending a deportation order to the wife and children of the alien concerned and whether this would not constitute discrimination based on sex. It was noted that, according to the report on Belize, aliens could be deported without having the opportunity to have their cases reviewed resulting in a violation of article 13 of the Covenant. Questions were asked on whether guarantees existed in the territories against the deportation and expulsion of persons who took refuge in the territories; the reason for the reservation on the application of this article in Hong Kong; and whether the Government was contemplating the withdrawal of this reservation. More information was requested with regard to the rights enjoyed by aliens in the territories. Did they, for example, enjoy political rights?

317. As regards article 14 of the Covenant, questions were asked on whether judges were recruited from the local population or from the metropolitan population, and how the independence of judges was guaranteed in the dependent territories. Noting that the Constitution Orders provided that a person should be presumed innocent until he was proved or pleaded guilty, one member wondered whether this might not open the way for by-passing the presumption of innocence, for example by putting pressure on an accused person to make confessions of guilt. Clarification was required with regard to the appeal procedure applied in Belize and Hong Kong where specific leave to appeal was required; the right of the accused in Gibraltar to interpretation throughout the court proceedings; the extent to which a victim in the Turks and Caicos Islands could bring an action against the authorities if there were no legal provisions for compensation from public funds; and the extent to which the procedure for making ex gratia payments in other territories was in conformity with paragraph 6 of article 14 of the Covenant.

318. In respect of article 17 of the Covenant, more information was requested on the guarantees for privacy of correspondence in Belize; and on the justification for the interception of correspondence of prisoners in the British Virgin Islands, Gibraltar and Pitcairn.

319. In connection with article 18 of the Covenant, questions were asked on whether there was a dominant religion in the territories; whether the local religions were respected; which religions were prohibited; was atheism prohibited; and were the people allowed to express their opinions and their socialist convictions. Referring to the report on Belize, one member stated that, if parents were required to obtain special permission for their children to absent themselves from religious worship and instruction, this could be considered a violation of article 18 of the Covenant. It was noted that freedom to manifest one's religion or beliefs was restricted by law in Belize, the British Virgin Islands, Gibraltar, Montserrat and the Turks and Caicos Islands only to the extent that this was necessary to secure public safety, order, health or morals, or the rights of others and more information was requested on these restrictions.

320. With reference to article 19 of the Covenant, members of the Committee asked whether the list of exceptions to freedom of expression contained in paragraph 58 of the report on Belize was exhaustive and, if not, what other restrictions existed; what was the meaning of the expressions "blasphemous" and "seditious" used in that paragraph; what punishment was provided for sedition; what recourse a citizen of a dependent territory had if he thought that his freedom of expression had been violated; and, with reference to the report on the Turks and Caicos Islands, what were the restrictions imposed on the public officers in respect of their freedom to express opinions.

321. With reference to article 20 of the Covenant an explanation was requested on the meaning of the sentence "a reservation has been entered to reserve the right not to amend or introduce further legislation on this subject" contained in paragraph 25 of the report on the Cayman Islands. It was asked whether the statement in the same paragraph that advocacy of hatred in certain circumstances was an offence under the Public Order Law 1973 meant that such advocacy was not otherwise an offence. It was also noted that none of the dependent territories seemed to have legislation prohibiting war propaganda as required under article 20 of the Covenant.

322. With reference to article 21 and 22 of the Covenant, explanations were requested on the expression “in the interests of the community as a whole” which justified the restriction on freedom of assembly in Belize, the British Virgin Islands, Gibraltar and Hong Kong, and on the statement in the report on the Cayman Islands that members of the Civil Service were precluded from taking an active part in any political arguments or electoral campaigns but were free to belong to a political party and to vote.

323. In respect of articles 23 and 24 of the Covenant questions were asked on what the legal age for marriage in Belize was; whether in the British Virgin Islands a woman could ever be considered head of the family; who received child custody in case of divorce; whether there were provisions for the payment of alimony; how widows and children were protected; and whether a husband in Gibraltar could legally rape his own wife if they were not separated; and whether there were, in St. Helena, any provisions for family planning. It was noted that in the British Virgin Islands a woman could lose her nationality if she married a foreigner and the question was asked whether that did not constitute a violation of article 23 of the Covenant. It was also asked why the status of children born out of wedlock in the dependent territories seemed to be inferior to that of other children.

324. In connection with article 25 of the Covenant, members of the Committee asked how the rights of the people provided under this article of the Covenant were guaranteed so as to ensure their active participation in the conduct of public affairs; and what was the percentage of the indigenous officials in the governments of the territories. They referred to the statement in the report on Belize that only English-speaking citizens could be elected Members of the House of Representatives and to other conditions relating to property and income for candidature in an election, and pointed out that these language requirements were not in accordance with articles 25 and 2 of the Covenant. Questions were asked as to who presided over the legislative council of the Falkland Islands; what authority did the members have and what ethnic groups did they represent; how and under what criteria were the executive and legislative councils in Hong Kong appointed; whether, under the circumstances, the people of Pitcairn could really take a firm stand on matters affecting relations between them and the United Kingdom; why only male persons in Pitcairn over the age of 21 years were eligible for election to the office of Island Magistrate or the Chairman of the Internal Committee; what were the conditions required by the candidates for public office in Gibraltar, and why, in the Turks and Caicos Islands, public officials were excluded from the election to the legislative council.

325. It was noted by a member of the Committee that, with regard to article 26 of the Covenant, the authors of the report had used Dicey’s concept of equality before the law as part of “the rule of law”, that is to say, equality before the courts. This definition applied to article 14 of the Covenant. Article 26, however, did not refer only to this Diceyan concept of equality before the courts, but also to the “egalitarian” concept of “equal protection of the law”, in the sense of non-discrimination. Thus, article 26 was not as restrictive as indicated in paragraph 136 of the report on Hong Kong, paragraph 112 of the report on Gibraltar, paragraph 145 of the report on the British Virgin Islands, but rather had the wider egalitarian meaning which was to be found in paragraph 39 of the Bermuda report and paragraph 75 of the Belize report, in which the authors accepted the post-Second World War definition which prohibited all discrimination.

326. With reference to article 27 of the Covenant, the question was asked whether Chinese or English was used in the administration of Hong Kong and whether Chinese was the medium of communication within the Chinese community. One member pointed out that the text of the report on Montserrat dealing with article 27 of the Covenant was not very clear because it said nothing about the actual practice and therefore required some explanation. Referring to paragraph 75 of the report on Belize which stated that territory's law applied equally and without discrimination "to all nationals and aliens" some explanations was requested, inasmuch as knowledge of English was a condition precedent to membership in the legislature, thus constituting discrimination.

327. With regard to the question of the preservation by the peoples of the territory of their own customs, language and culture, the following questions were asked: whether they were allowed to have their own schools where their own language was the medium; whether their cultures, rites and religious practices were encouraged; whether they were provided with medical aid and social security; and whether child labour was allowed. With regard to the problems of the identity of the dependent territories the question was asked as to whether there was a policy to safeguard this identity or rather a policy of assimilation through the medium of the English language.

328. From the statement contained in paragraph 74 of the report on Belize, there appeared to be a grave risk of assimilation being carried out in that territory by a policy designed in effect to suppress the Spanish language. If this were true, it would constitute a violation of article 27 of the Covenant.

329. The representative of the United Kingdom replied to those of the observations and questions summarized in the preceding paragraphs on which he could comment at least in part, subject to the possibility of amplifying or modifying those comments later when the questions and observations made by members of the Committee had been fully studied by the authorities of the dependent territories concerned.

330. Responding to questions under article 1 of the Covenant he stated that British colonial policy was governed by a principle which could aptly be summarized as "stay if you like, go when you wish". He was in agreement with members of the Committee that in 1979 colonies constituted an anomaly but at the same time there was a dilemma: if the people wished to remain there would be certain constraints imposed on their wishes, including the matter of helping the United Kingdom perform its international obligations. Experience had demonstrated that there was no panacea but each territory must be treated on its own merits and according to its own wishes. It should also be recalled that while General Assembly resolution 1514 (XV) of 1960 dealt with independence, the Covenant spoke of the right of self-determination. In his opinion, St Helena would never be able to achieve independence. He gave additional information concerning the political development in each of the 11 territories which he divided in two groups; the first group which might be termed "political" dependencies included Hong Kong, Gibraltar, Belize and the Falkland Islands and the second group consisted of what might be termed the "normal" colonies, which comprised the rest.

331. Because of the geographical and historical circumstances of Hong Kong, the members of the Executive and Legislative Council were not elected although members of the urban council were.

However, considerable efforts were made to ascertain the views of the interested parties and act accordingly. In his experience the Hong Kong Government was obliged to take more account of public opinion that were those of some neighbouring independent territories. The Chinese language was freely used in communications between the Government and the public at large.

332. For the United Kingdom Government, the wishes of the people of Gibraltar were paramount. As shown by the result of the election of 1976, people in Gibraltar were opposed to being placed under Spanish sovereignty. There was a House of Assembly and an official Opposition.

333. As for Belize, all has been set for independence for several years. Only international political difficulties constituted an obstacle and discussions were in progress to solve the problem. Elections would be held within a few months.

334. The population of the Falkland Islands had been given the assurance by the United Kingdom that any proposals affecting their future must be acceptable to them. He informed the Committee that the population of the territory was only 1,800: nearly all of them were of British descent and 80 per cent were born in the territory. On many occasions the people had expressed the desire to retain their links with the United Kingdom. There was at present no demand for independence. Discussions continued with Argentina to solve the international political aspects of the problem. He informed the Committee that recently a Minister of the United Kingdom visited Buenos Aires, as well as the Falklands, for this purpose. As requested he gave detailed information concerning the system of government of the islands.

335. With regard to other dependent territories, that is to say, the “normal” colonies, the representative provided the Committee with the following information: (a) Bermuda : In 1977 the Government of Bermuda published a Green Paper on independence. Two studies undertaken by the United Bermuda Party, which was the party in power, showed that the majority did not want independence. A White Paper would be published in the near future. In his personal view, Bermuda would eventually become independent but not for several years. (b) The British Virgin Islands : The people of the territory did not want independence in the near future. The question of independence was not raised during the election in 1975 and most likely would not be an issue in the next election scheduled later this year. The territory would probably become independent, but only, when, with the aid of the United Kingdom, its economy became stronger. (c) The Cayman Islands : the people were strongly opposed to any discussion on independence and to any new constitutional changes, which in their view, would inevitably lead in that direction. The visit of the United Nations Committee of 24 to the Islands in 1977 was very much resented not only by the people, but also by the local press and some members of the Government. The United Kingdom was blamed for this visit and he had been asked to ensure that no such visit occurred in the future. In his view, the increasing political instability in the Caribbean would hardly encourage the Cayman Islands to seek independence. (d) Montserrat : General elections were held in November 1978, but the two parties did not raise the question of the future of the territory. There was no movement in favour of independence. The people were free to determine their own future in accordance with the principles of the Charter. It was possible that regional pressure would lead Montserrat eventually to opt for independence, but not before it had consolidated its economy. (e) The Turks and Caicos Islands : the Government of the territory had informed the United Kingdom

Government of its intention to ask for certain constitutional changes with a view to moving towards political independence. On the other hand, the Opposition was at present not in favour of independence. His impression was that the party in power would like to make the constitutional changes a prelude to independence provided that it would succeed in consolidating the economy of the territory. (f) St. Helena : On several occasions the Legislative Council of the territory had informed the United Kingdom Government that the population did not wish to become independent and, accordingly, no further constitutional changes were contemplated. Because of its scarce resources it was very difficult to see how St. Helena could be independent in the foreseeable future. The Island relied very much on the United Kingdom for substantial grants-in-aid. (g) Pitcairn : This island was a special case. He agreed with members of the Committee that although the Island had only 65 inhabitants their human rights should not be ignored. Fewer and fewer boats passed near the Island and they were now very expensive to divert and even then they had to stop at the reefs which surround the Island. Much of the required public work mentioned in the report was necessary to man the long boats to transport merchandise to the Island. If one day there were not enough people to carry out this job, most likely every one would have to migrate, for instance, to New Zealand. He said the Island had a council of 10 members which exercised legislative powers under the supervision of the Governor. A Committee of the council was responsible for traditional public works and supervised their execution.

336. Replying to another question under article 1 of the Covenant he assured the Committee that there existed frequent ministerial contacts between London and local administrations to find out the wishes of the local population. For example, a Minister of the Foreign and Commonwealth Office was at present holding discussions with the Chief Minister of Montserrat. In this connection he once again emphasized that British colonial policy was not to force the people of the territories to do something contrary to their wishes.

337. In reply to the question concerning the “exorbitant” power of the governors. He explained that colonial governors were not ambassadors but administrators. Nevertheless, they conveyed the wishes and policies of the British Government to the local population. At the same time they very strongly represented the wishes of the local population to London. He added that the Governor was not a dictator because his powers were limited by the restrictions and requirements provided by the laws, the conventions and the instructions of Her Majesty in Council. In general he could not take decisions until after having consulted various persons or bodies. Above all he was responsible for peace and good order in the territory and for the well-being of the people. To this end he was vested with residual powers. In this connection he referred to article 27 of the Constitution of Belize.

338. With regard to the question concerning Ocean Island, the representative stated that the island was now a part of the new republic of Kiribati inasmuch as it would not have been appropriate for the United Kingdom to lay itself open to a charge of dismemberment of territory before the granting of independence. The situation was not comparable to that of the former Ellice Islands, now Tuvalu, which were separated from the Gilbert Islands as a result of a referendum.

339. Regarding the protection of the natural resources of the dependent territories, he stated that the British Government was very sensitive to the defence of the interests of the peoples of the dependent territories at various international forums, including the United Nations Conference on

the Law of the Sea. No immediate benefits would accrue for the United Kingdom in cases of discoveries of deposits of oil, for instance. In this connection he stated that, for example, if the present search for oil off Anegada in the British Virgin Islands succeeded, the United Kingdom would not directly benefit from the discovery.

340. In response to the question concerning the status of the Covenant in the dependent territories and the incorporations of the provisions of the Covenant in the Orders in Council of these territories, he explained that before the ratification of the Covenant, the Government of the United Kingdom had ensured that the legislation in force in the territories was in conformity with the provisions of the Covenant. He stated that the legislation of the United Kingdom as well as that of the dependent territories contained the principles of common law and equity which in his opinion were not at all nebulous. These principles were solidly founded on decisions of the courts, which had been accumulated in the course of the years. In some of the territories, namely those which were approaching independence, there existed Orders in Council or other constitutional instruments which embodied the provisions contained in the Covenant.

341. As to the question whether the laws of the metropolitan area were automatically applicable in the dependent territories, he stated that some were and others were not. He explained that in colonies which were settled by the British, the principle was that the colonizers brought their laws with them when they settled there. In the case of territories which had been conquered, the existing laws continued in force until they had been amended by the new authorities. In general, following a decision taken locally or more often by the metropolitan public authority the principles of common law and equity were introduced in the territories subject to local laws and the metropolitan laws which had already been in force. In brief, the application of metropolitan law in the territories was not automatic.

342. In response to the question concerning the responsibility of the United Kingdom for ensuring that the dependent territories comply with the provisions of the Covenant, he stated that in principle it was evident that in case a dependent territory failed to respect a certain obligation under the Covenant, the United Kingdom could be held responsible at the international level. As a matter of fact the United Kingdom attached a great importance to the observance by all States of their international conventional obligations and made sure that the legislation of territories was in conformity with the provisions of the Covenant. Of course, due to local circumstances certain provisions of the Covenant were not always literally reflected in the local legislation. If it proved necessary to amend the legislation, this would necessarily take some time.

343. In reply to a question concerning the declaration of the United Kingdom on the relation between the Charter and the Covenant, he stated that that declaration was made in case there was a contradiction between the provisions of the Covenant and those of the Charter. In fact the declaration may not have been necessary in view of article 103 of the Charter.

344. In reply to the question concerning the New Hebrides, the representative stated that no report was submitted on that territory because the United Kingdom shared responsibility for this territory with France. He added that the New Hebrides could be expected to become independent in the near future.

345. In reply to a question concerning the statement in the report on the Cayman Islands that the territory “is bound by the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms”, he explained that this was in accordance with article 63 of the European Convention on Human Rights which stated that any State could, at the time of its ratification or at any time thereafter, declare that the Convention should extend to all or any of the territories for whose international relations it was responsible. Invoking this article the United Kingdom had declared in 1953 that the Convention applied to most of its dependent territories. The following territories were bound by the European Convention: Belize, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, St. Helena and Turks and Caicos Islands. With regard to the right of petition of the individual and acceptance as compulsory of the jurisdiction of the European Court of Human Rights, provided for by articles 25 and 46 of the European Convention, these two provisions were applicable to Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, St. Helena, and the Turks and Caicos Islands.

346. In reply to questions concerning the British Indian Ocean Territories and the bases in Cyprus the representative stated that the Covenant was not ratified in respect of these two Territories.

347. Responding to a question under article 2 of the Covenant as to whether the Crown Proceedings Ordinance of the British Virgin Islands provided sufficient recourse against the Crown, he stated that article 3 of the Ordinance had abolished previous restrictions applicable in cases against the Crown.

348. Responding to a question under article 6 of the Covenant in relation to paragraphs 12 and 13 of the report on Bermuda, particularly concerning the meaning of the term “during Her Majesty’s pleasure”, the representative stated that the imprisonment in such cases could be about eight to nine years and that the circumstances of each case determined the duration of sentence.

349. With regard to paragraph 10 of the report on Bermuda which dealt with cases when a person could be deprived of his life, the representative called the attention of the Committee to article 2 of the annex to the Bermuda Constitution Order 1968, in particular to the phrase, “to such extent and in such instances as are permissible by law, of such force as is reasonably justifiable” which left it to the court to decide whether the circumstances and the means used in a particular case made the deprivation of life justifiable.

350. As to the question of the death penalty, the Common Law provided only the ingredients for murder but did not define the word murder. Traditionally, crimes which were punishable by the death sentence were treason, piracy and murder. In most countries where the crime of murder was statutory a distinction was made between simple and pre-mediated murder. The concept of the Common Law, however, made a distinction between “intent to kill” and “killing with malice aforethought”, rather than in accordance with the degree of murder.

351. In reply to a question related to the passage in the report of the Turks and Caicos Islands which gave the impression that youths of 16 years of age could be sentenced to death, and to the query concerning the sending of children to centres of detention in Hong Kong, he stated that he would study the matter and communicate the results to the Committee later.

352. Responding to a question concerning what action had been taken by the United Kingdom in connection with violation of article 3 of the European Convention, which was equivalent to the article 7 of the Covenant, the representative stated that if the question was related to the decisions concerning certain practices in Northern Ireland and the decision taken earlier this year on the subject of corporal punishment on the Isle of Man, he reminded the Committee that the reply to the question of the United Kingdom could be found in its supplementary report of 13 September 1978, document CCPR/C/1/Add.35, paragraphs 14 to 17; and in CCPR/C/SR.149, paragraphs 3.

353. The question was also raised as to whether the decision taken under the provision of the European Convention should be applied to analogous provisions of the Covenant. He stated that it would be erroneous to consider the decisions under the provision of the European Convention as conclusive and also binding in respect of similar articles of the Covenant. He reminded the Committee that the two instruments were adopted under different circumstances and there was an interval of 20 years between them. Also the European Convention was an instrument with a regional character, that it would not necessarily be appropriate to apply the same interpretation to analogous provisions of the Covenant which had a world-wide character. However, this did not mean that one should not take into account the decisions of the European Convention, which would be of persuasive weight in construing the analogous expressions used in the Covenant. As to corporal punishment, neither the European Convention nor the Covenant used that expression. It was a matter of interpretation of the term "degrading treatment". The United Kingdom Government would study this question with great care, in particular, as it applied to the different situations of the dependent territories. The observations made by the members of the Committee on this subject were certainly very useful. With regard to specific information requested on corporal punishment in certain dependent territories, the Government would reply in writing at a later stage.

354. In reply to a question under article 8 of the Covenant relating to paragraph 41 of the report on the British Virgin Islands concerning the hard labour which could be imposed at the discretion of the court for crimes for which such an option was expressly provided, he said that the competent authorities would be consulted on the matter. Responding to another question under this article, he said that slavery did not exist in any of the territories.

355. Commenting on questions under article 9 of the Covenant relating to bail as referred to in the reports of a number of the dependent territories the representative stated that this measure was intended to secure the liberty of a person and at the same time to ensure his attendance at the subsequent hearing. The question of payment usually only arose if the individual concerned failed to appear in court. In fact, the judges, in the exercise of their authority, took into account the financial situation of the individual, because the aim of this measure was not to keep someone in prison if he had no financial resources.

356. With regard to the question of compensation for unlawful arrest or detention, he said that in practice article 9, paragraph 5, of the Covenant was applied in spirit. However new provisions should perhaps be contemplated to observe fully the provisions of the Covenant. This question would be studied further.

357. In reply to a question under article 10 of the Covenant related to paragraph 5 of the report on St. Helena, he believed that the punishment was applied after it had been confirmed by the non-resident Chief Justice. He, however, undertook to seek confirmation of this matter with the authorities concerned.

358. Responding to a question under article 14 of the Covenant related to paragraph 3 of the section of the report on the Turks and Caicos Islands, he said it seemed that the provision was not aimed at the Government but at the authority which was responsible for instituting criminal proceedings maliciously or without reasonable cause. He would provide further clarification on this matter.

359. In reply to a question relating to paragraph 2 of article 6 of the Bermuda Constitution which provided that a person could be declared guilty if he pleaded guilty, the representative stated that in practice the judge may often refuse the confession as a proof. However, one could consider that a plea of guilty in itself was proof of culpability. As to the question of whether the accused was responsible for the cost of the attendance of his witnesses, the representative stated that as far as he could remember, in Bermuda at any rate the cost of the defence witnesses and that of the accused was defrayed from public funds.

360. With regard to the question as to who decided that court proceedings should be held in camera, he said that the decision was in the hands of the judge but that proceedings in camera were extremely rare.

361. Referring to a question in connection with article 14, paragraph 3 (f) of the Covenant, and paragraph 39 and 65 of the report on Belize and Gibraltar respectively, the representative assured the Committee that in practice all the pertinent proceedings were interpreted for the benefit of the accused.

362. With regard to the question of the independence of the judges, he stated that in general the judges were appointed and dismissed by the Governor. However, in all these matters he acted on advice of the Judicial Commission. For the dismissal of a judge, the opinion of the Privy Council was indispensable. In practice, this guarantee ensured security of tenure to judges. However, he pointed out that, as in many other countries, the necessary funds for the functioning of the judiciary did not depend on the legislative and executive bodies but were a permanent charge on public funds. The question of inflation, however, should be taken into account in the matter. He believed the question merited further study.

363. The representative stated that if there was a conflict between the provisions regarding the fundamental rights contained in the Constitution of certain territories, the question would be settled by a superior court such as the Supreme Court.

364. In reply to a question concerning the shifting of the burden of proof from the prosecution to the accused, as referred to in the report on Hong Kong, the representative stated that in principle the burden of proof rested on the prosecution. However, in certain special cases it was shifted to the accused, for example in cases where a person was found to be in possession of explosives or

dangerous drugs. In this case, it was for the accused to explain the lawfulness of his possession.

365. With regard to the question concerning the entrenchment of fundamental rights and freedom in Orders-in-Council, for example, the Bermuda Constitution Order 1968, he stated that if the entrenchment was enacted by an Order-in-Council the rights could not be affected by laws adopted by the local legislature. Sometimes, the Order-in-Council contained provisions which stipulated that they could only be amended by a special procedure, for example, by a two-thirds majority of the Parliament or by referendum. These guarantees had proved to be effective.

366. In reply to a question under article 15 of the Covenant concerning the adoption of an ex post facto legislation, he stated that so far not a single territory had enacted legislation in contradiction with article 15 of the Covenant. In this connection he referred to the reply concerning the United Kingdom in this respect contained in paragraph 16 of document CCPR/C/SR.70 of 1 January 1978, which was also valid for the dependent territories.

367. Responding to a question under article 19 of the Covenant the representative replied that except in Hong Kong, for reasons which were already explained, political parties were allowed; they could criticize freely the local Government and the Governor. Voluntary organizations and trade union meetings were allowed to flourish and public meetings and discussions were free and lawful.

368. As to the questions asked in relation to paragraph 58 of the report on Belize, he stated that the list of limitations on freedom of expression was exhaustive.

369. Responding to questions under articles 19 and 21 of the Covenant concerning the definition of “blasphemous” and “seditious” he stated that he would provide the Committee with the definition of these expressions at a later stage. In the meantime he called the attention of the Committee to the law on “Sedition and Undesirable Publication” of the British Virgin Islands which contained a definition of “Seditious intention” as follows: “An intention to bring into hatred or contempt or to excite dissatisfaction against the person of Her Majesty, her heirs, or successors, or the Government of the Colony as by law established ... to incite the inhabitants of the Colony to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the Colony by law established ... to bring hatred or dissatisfaction among the inhabitants of the Colony”. However, the law expressly provided that no publication could be considered seditious simply because it sought to show that the Government had committed an error; to underline the errors or the shortcomings of the Constitution of the Colony; or to persuade the inhabitants of the Colony to try to change by legal means the legislation of the Colony. He stated that a simple criticism of the Government was certainly not a seditious act.

370. Commenting on the observations made on article 20 of the Covenant, the representative stated that the United Kingdom had made a reservation with respect to this article. He referred to document CCPR/C/2.

371. In reply to a question under article 23 of the Covenant concerning the marriage laws in force in Belize, the representative stated that in accordance with the existing law persons below the age of 18 required parental permission to get married. With regard to a question whether the law in the

British Virgin Islands provided for alimony and child care in case of divorce, he stated that alimony was provided by article 22 of the Matrimonial Cases Ordinance of the Territory and article 25 of the same Ordinance authorized the court to decide on the custody of the children.

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518. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18) and the guidelines adopted at its thirteenth session regarding the form and content of reports from States parties (CCPR/C/20), and having further considered the method to be followed in examining second period reports, the Committee, prior to its twenty-fourth session, entrusted a working group with the review of the information so far submitted by the Government of the United Kingdom of Great Britain and Northern Ireland in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representative of the United Kingdom. The list, supplemented by the Committee, was transmitted to the representatives of the United Kingdom prior to their appearance before the Committee with appropriate explanations or the procedure to be followed. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of the United Kingdom would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

519. The Committee considered the second period report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/32/Add.5) at its 593rd to 598th meetings, held from 9 to 11 April 1985 (CCPR/C/SR.593-598).

520. The report was introduced by the representative of the State party who stated that a number of significant developments had taken place in United Kingdom domestic law and administrative practice since the submission of his country's initial report. They included the enactment of the Police and Criminal Evidence Act, the Mental Health Act, the British Nationality Act and the Data Protection Act, changes in the rules governing prisoners' correspondence and a review of disciplinary offences applying to prisoners and of the arrangements for their investigation, adjudication and punishment. The arrangements for compensating miscarriages of justice were also currently under review by the Home Office as was its legislation on public order. The Interception of Communications Bill, which placed the interception of communications on a statutory footing and established machinery for investigating complaints of unlawful interception, and the Prosecution of Offences Bill, which for the first time established a national prosecution service independent of the police and provided for statutory time-limits within which a defendant must be brought to trial, were currently before Parliament. Domestic courts were also making increasing use of the procedure for judicial review, under which the reasonableness of administrative decisions could be challenged before the courts and a ruling obtained. Finally, all the recommendations of an independent inquiry into the operation of the prevention of terrorism legislation, which were designed to mitigate the severity of some of that legislation's provisions, had been implemented in the Prevention of Terrorism (Temporary Provisions) Act 1984 and the Government was currently reviewing the Northern Ireland emergency legislation in the light of the recommendations of a 1984 inquiry into that legislation.

521. The representative noted that his country's second periodic report concerned only the metropolitan territory of the United Kingdom and that a supplementary report on the United

Kingdom dependent territories would be submitted shortly, for consideration by the Committee at a future session.

Constitutional and legal framework as well as other measures adopted to give effect to the Covenant

522. Members of the Committee wished to receive more specific information about new legislation and regulations adopted to give effect to the Covenant as well as about the extent to which pre-existing legislation and regulations afforded adequate protection of rights covered in the Covenant. They also asked whether there had been any precedent-setting judicial decisions regarding the implementation of the Covenant or cases in which reference had been made to the Covenant; and, given the fact that there was no written constitution and no written bill of rights and that the courts operate on the basis of common law and precedents, whether the United Kingdom was in fact in a position to “ensure” that the Covenant’s provisions were given proper effect. Furthermore, it was asked how, under such circumstances, citizens could be aware of their rights and judges could apply the provisions of the Covenant. It was noted that the Privy Council could adjudicate on human rights provisions entrenched in certain Commonwealth constitutions but the judiciary could not do so in the case of the United Kingdom itself, because the United Kingdom had failed to enact similar legislation. In that connection, members asked what consideration had been given to the possible introduction of a bill of rights or similar measures for ensuring the implementation of human rights which, they felt, would provide a firmer basis, for compliance with the Covenant. It was also asked whether the existing system of specific remedies actually covered all of the rights under the Covenant. Additional information was also requested about the legal framework in Scotland and Northern Ireland and about factors and difficulties, particularly of a political and economic nature such as race relations or unemployment, that might have affected the implementation of the Covenant. In that respect, members requested further information about the human rights situation in Northern Ireland. Regarding promotional activities, it was asked what specific measures were being taken to enable people to enjoy civil and political rights, what steps had been taken to overcome existing economic inequalities, whether the Covenant, the Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Code of Conduct for Law Enforcement Officials had been publicized among the armed forces, the police and prison officers, especially in Northern Ireland, and whether the general public in the United Kingdom was aware of its rights under the Covenant. Noting that women were placed at a disadvantage under certain provisions of the British Nationality Act of 1981, a member requested additional details about that legislation.

523. In his reply, the representative of the State party explained that in his country the existence of human rights and individual freedoms had been traditionally assumed and that such rights were protected by common law. Thus, it had not been considered necessary to adopt legislation to cover every possible infringements of human rights. However, recently it had become necessary to enact protective measures and declaratory laws in such areas as race relations, sex discrimination and data protection. Clearly, the law and administrative practice were evolving in keeping with the Covenant’s principles and the need to stay abreast of changing circumstances.

524. Over the past 10 years there had also been considerable debate in Parliament concerning the possibility of enacting a bill of rights, but as yet no bill had won sufficient support to permit any further action. While the idea of a bill of rights enjoyed considerable support in some parliamentary and legal circles, without regard to party affiliation, there was also considerable opposition from those who argued that it would represent a surrender of influence by the House of Commons in favour of the judiciary and the legal profession. The Government hoped to submit new proposals in that regard at some future date, but in view of the lack of broad agreement it did not feel it possible to take action at the present time. Consideration was also being given to various progressive measures which would fall short of incorporating a bill of rights into the national legislation. The current approach of applying ad hoc remedies to problems and situations as they arose might continue. Although that approach had the disadvantage of being inconsistent and difficult to understand, it provided effective remedies to particular problems. It should also be kept in mind, however, that providing a wide range of remedies could give rise to abuses which might be very detrimental in the long run to Government. In addition, the Government was considering the practicability of the partial incorporation of relevant provisions of the Covenant or the European Convention on Human Rights into the national legislation.

525. Regarding new or existing legislation and regulations to give effect to the Covenant, a list of the relevant laws and regulations had been appended to the report and copies of the texts made available to members of the Committee. There had also been several court rulings under the process of judiciary review which had a significant impact inter alia, on the rights of prisoners set out in the Covenant, and rulings of the European Court of Human Rights had also prompted the enactment of domestic legislation. Concerning the legal framework in Scotland and Northern Ireland, the representative noted that a considerable body of law, for instance that governing immigration, nationality and data protection, was applicable to the United Kingdom as a whole. Some other laws, for instance those on equal pay, sex discrimination and race relations, extended to Scotland. Separate legislation, based on the same principles, existed for Northern Ireland but legislation against religious or political discrimination, which did exist there, had no parallel in the rest of the United Kingdom. Thus, in so far as the system of common law applied in Northern Ireland as it did in England and Wales the law was substantially the same, with divergences occurring mainly with respect to statute law in such areas as those illustrated above.

526. With regard to promotional activities, both the Covenant and the work of the Human Rights Committee were well publicized, as was the European Convention on Human Rights. Informed opinion in the United Kingdom was well aware of the possibilities offered by the two instruments and of how they could be used to ensure the protection of human rights in the United Kingdom and internationally, and the Government had not felt it necessary to engage in any additional promotional activities. As to whether there were factors and difficulties affecting the implementation of the Covenant, it was a fact that there were some areas of national life in which the provisions of the Covenant could not be reconciled with Government policy and practice. In such areas, which included sex discrimination in immigration control legislation and differing political views as to whether or not specific legislation should be enacted to give effect to the Covenant, the United Kingdom had entered reservations to the Covenant.

527. Concerning the extent to which it was possible for courts in the United Kingdom to base

decisions on the provisions of the Covenant, the representative explained that the situation had not changed since the submission of the United Kingdom's initial report. In interpreting provisions of domestic law British courts took into account all the obligations of the United Kingdom under international legal instruments to which it was a party. While he did not know of any particular case in which the Covenant had been referred to in a court decision, there were no restrictions preventing litigants from involving provisions of the Covenant in a court of law and, in fact, in many instances lawyers did refer to the legal obligations of the United Kingdom under the Covenant and the European Convention of Human Rights in presenting their cases. Undoubtedly, the Government of the United Kingdom could also speak before judicial bodies as amicus curiae for the purpose of drawing their attention to certain provisions of international law; in practice, international instruments were often brought to the attention of the court by the judge himself or by lawyers.

State of emergency

528. With reference to that issue, members of the Committee wished to know whether the rights covered by the Covenant which had been derogated from had been fully restored following the termination of the state of emergency on 22 August 1984, whether there were any differences in that regard between Northern Ireland and other parts of the United Kingdom and whether any other emergency or exceptional measures were still in forces and, if so, whether they affected the enjoyment of human rights and were considered adequate. Additional information was requested regarding the measures that had been taken to investigate deaths resulting from the action of security forces in Northern Ireland and the results of such investigations, particularly in the context of preventing the recurrence of such acts, in line with the Committee's general comments 6 (16) (art. 6). In that connection, it was asked who controlled the actions of the police and the security forces. Members asked for clarification of several other aspects relating to the emergency, including the operations of the Diplock courts in Northern Ireland, whose procedures seemed inconsistent with articles 2, paragraphs 1, 14 and 26 of the Covenant. They also asked whether the required measures in the political and social fields had been taken to solve the problems which had led to violence and whether any improvement or progress had been achieved towards the resolution of the Irish question; whether the recommendations of the Bennett Committee on police interrogation practices had been put into effect and, if so, to what extent; and whether there was any parliamentary control over the emergency powers of the executive in Northern Ireland, including the police, who appeared to have the power both to carry out investigations of police misconduct and to decide whether prosecutions were warranted. Referring to paragraph 3 of the Committee's general comment 5 (13) concerning article 4 of the Covenant, members also requested information about the nature and extent of each right derogated from and why it was now thought possible to operate within the provisions of articles 9 and 14 of the Covenant. It was further asked how far it had been possible for an individual to have recourse to the Covenant in order to establish whether measures taken by the Government were legitimate.

529. Replying to those questions, the representative of the State party said that his Government had withdrawn its notice of derogation from the Covenant not because there was no longer an emergency in Northern Ireland, but because it believed that the rights in the Covenant were currently fully observed throughout the United Kingdom. In fact, there were still two Acts of

Parliament in force which provided special powers: the Northern Ireland Emergency Provisions Acts 1978, which conferred special powers of arrest and search and established special judicial procedures for territories, and the Prevention of Terrorism (Temporary Provisions) Act 1984. Those measures were considered sufficient to deal with the situation, but the Government was also currently considering some recommendations based on an independent inquiry into Northern Ireland emergency legislation by Sir George Baker.

530. In Northern Ireland, as in England and Wales, any death or serious injury resulting from the action of the security forces was fully investigated by the police - the Royal Ulster Constabulary in the case of Northern Ireland - and the Chief Constable was obliged by law to refer any case which he felt might involve criminal action by the security forces to the Director of Public Prosecutions, who was independent both of the Government and the police and whose responsibility it was to decide whether a prosecution should be brought. A number of police officers and soldiers had been charged with criminal offences and brought to trial. There was also an independent procedure in Northern Ireland, similar to that existing in England and Wales, for investigating complaints against police officers. It was administered by an independent police complaints board whose function it was to see that complaints were investigated and to pass them on to the Director of Public Prosecutions if it appeared that a criminal offence had been committed. The fact that police and soldiers had been prosecuted for alleged crimes had demonstrated that the system could work. Under the Police and Criminal Evidence Act 1984 the police complaint boards in England and Wales had been replaced by a new body authorized to supervise police investigation of service offences directly, and there were plans to set up a similar system in Northern Ireland. A number of the recommendations made by the Bennett Committee concerning the treatment of suspected terrorists had also been implemented. Security forces in Northern Ireland were not instructed to shoot to kill and were subject to the same restrictions in that regard as the police in England. Every soldier carried a yellow card which listed the circumstances in which he could open fire and similar instructions had been issued to members of the police force. Plastic bullets were designed to be used only against people involved in some specific public disorder and it was believed that the use of such bullets had saved lives.

531. As to the questions whether there was an inconsistency between the judicial procedures in use in Northern Ireland and articles 2, paragraph 1, and 26 of the Covenant, the representative responded that in his Government's view the application of different degrees of protection in the trial of offenders - or in the existence of Diplock courts - did not constitute a breach of those articles and it had not therefore been considered necessary to derogate from those articles. The special procedures were necessary because experience had shown that intimidation made it impossible to guarantee a fair trial by jury.

532. Regarding the matter of convictions on the basis of confessions or in the evidence of informers, a number of procedural safeguards had been provided. The admission of confessions as evidence was forbidden under section 8 of the Northern Ireland Emergency Provisions Act, unless it was shown that they had not been obtained by means prohibited by article 7 of the Covenant. In Northern Ireland, as in Great Britain, judges also had power to refuse the admission of confessions if they considered that their prejudicial effect outweighed their value as evidence. While the law had always allowed the introduction into evidence of the testimony of informers or accomplices, both in Northern Ireland and in Great Britain judges were required to warn juries against

convicting on the basis of uncorroborated testimony from such witnesses. In trying terrorist cases in Northern Ireland, without juries, judges were required to observe the same degree of caution they would enjoin upon juries. Judges in such trials were also required by law to give not just their judgement but the reasons for their findings. A further special safeguard in such cases in Northern Ireland - which contributed to making safeguards more rigorous there than in the rest of the United Kingdom - was the automatic right of appeal to a higher court on matters of fact as well as of law.

533. Replying to questions concerning the United Kingdom's derogations from certain articles when it had ratified the Covenant and why such derogations had been withdrawn, the representative explained that the derogation from article 9 had been considered necessary in 1976 because the provision for detention without trial in Northern Ireland had still been in force (it had been discontinued in 1980). Similar considerations applied to the derogation from article 14, because proceedings before commissioners might not have been compatible with its provisions. The derogation from article 10, paragraphs 2 and 3, could be withdrawn, since juveniles convicted of terrorist offences were now detained in two new centres and no longer had to be accommodated together with adult offenders. Article 12, paragraph 1, had been derogated from because it had been felt that the powers then in force to prevent the movement of suspects between Northern Ireland and Great Britain might not have been compatible with that provision. Such powers had since been drastically reduced and could now be considered to fall within the exceptions allowed by article 12, paragraph 3. Similar considerations applied to other derogations that had been entered in 1976, and the United Kingdom was again confident that it was giving full effect to the provisions of the Covenant in Northern Ireland. The United Kingdom had never derogated from its obligations under article 3 of the Covenant, and the emergency measures that had been taken were found by the European Court of Human Rights to have been strictly required by the exigencies of the situation.

534. With reference to questions concerning the measures that were being taken to solve the problems in Northern Ireland, the representative stated that his country was making every effort to find appropriate solutions. In 1982, the Northern Ireland Assembly had been charged with producing constitutional proposals which would receive the support of both the majority and the minority communities, but so far no such proposals had emerged. Measures had also been taken to assure respect for the rights of the minority community, such as the Northern Ireland Constitution Act 1973, which prohibited public discrimination on the basis of religion or political opinion, and the Fair Employment (Northern Ireland) Act 1976, which had established a fair employment agency to work towards the elimination of any discrimination in employment.

535. Since 1977 there had been a steady decline in terrorist acts resulting in death or serious injury, although a substantial number of such acts still occurred. The fact that the situation had improved was partly a result of the measures that had been taken by the United Kingdom. The legislation that had been enacted to deal with the emergency (i.e. the Prevention of Terrorism (Temporary Provisions) Act 1984 and the Northern Ireland Emergency Provisions Act 1978) were temporary measures and their extension was subject to the adoption of resolutions by both Houses of Parliament.

Self-determination, including internal and external aspects

536. With reference to that issue, members of the Committee wished to know what the situation was regarding the territories that had not yet become independent, what the United Kingdom's intentions were with regard to the possible withdrawal of its reservation concerning the application of the Covenant to the British Indian Ocean Territories in furtherance of articles 1 and 12 of the Covenant, what its position was on the right of self-determination of the peoples of Namibia and Palestine; what its intentions were concerning Islands which had belonged to Mauritius and which had subsequently been incorporated into the British Indian Ocean Territories and how it exercised its power at home over British subjects and corporations to prevent them from supporting the South African régime. It was also asked what the United Kingdom Government was doing to promote self-determination in Northern Ireland and what the constitutional and political processes were that would allow the exercise of the right of self-determination, what had been done to develop a dialogue with a view to resolving the situation in the Falkland Islands, what the nature and legal basis of the ties existing between the United Kingdom and the Channel Islands was and what the constitutional position of Governors-General was and whether holders of that office had the right to invite foreign intervention without the consent of the local authorities. Noting that 11 dependent territories had gained independence since the submission of the United Kingdom's initial report, one member inquired how many dependent territories remained. Commenting on the success of the United Kingdom's decolonization policy, another member questioned the utility of retaining the United Kingdom's reservation to article 1 of the Covenant and asked whether the withdrawal of that reservation could be reconsidered.

537. In his reply to the questions raised by members of the Committee, the representative of the State party said that a supplementary report dealing with the United Kingdom's dependent territories - and, *inter alia*, with the question whether the United Kingdom intended to withdraw its reservation concerning the application of the Covenant to the British Indian Ocean Territories as well as with the question concerning the Falkland Islands - would be submitted at a later stage. His Government had the highest regard for its obligations under article 1 of the Covenant and was not indifferent to the many cases of international disputes involving the right of self-determination. Its position on such issues, including the important questions of Namibia and Palestine, had been clearly stated before the relevant United Nations bodies and was well known. He assured the Committee that no British companies were responsible for the denial of the right of the self-determination in southern Africa and stated that the United Kingdom had no intention of detaching any part of Mauritius.

538. With reference to the questions relating to the role of the Governor-General, the representative explained that holders of that office were personal representatives of the Queen and exercised whatever powers the monarch might have under the Constitution of the territory in question. As to the remaining number of dependent territories, he said that 10 territories remained under British administration currently as compared with 43 in 1946.

539. Responding to the request for information concerning the political and constitutional process that would enable the people of Northern Ireland to determine their future, the representative explained that two basic elements were involved. Currently, the applicable principle was that of continued direct rule and continued association with Great Britain as part of the United Kingdom.

However, there were statutory provisions for testing the wishes of the Northern Ireland electorate on the question of direct rule by means of a poll at periodic intervals of not more than 10 years. In addition, there was also the Northern Ireland Assembly, which had been set up in 1982 to make proposals for devolution and to scrutinize the process of direct rule. Unfortunately, owing to various difficulties not much progress had been made thus far on formulating new constitutional arrangements, although the Assembly had provided a valuable local and democratic contribution to direct rule.

540. With reference to the constitutional relationship between the United Kingdom and the Channel Islands, the representative explained that it was based on an old relationship involving the Duchy of Normandy in the Middle Ages. Currently, the Channel Islands were regarded as Crown Dependencies.

Non-discrimination and equality of sexes

541. With reference to this issue, members of the Committee wished to have information on how article 2, paragraph 1, of the Covenant, which prohibited discrimination “without distinction of any kind”, was implemented in British law and specifically whether the principle of non-discrimination and equality before the law had been incorporated into a written law covering all the provisions of article 2,3 and 26 of the Covenant. Members also asked about the implementation of the United Kingdom’s reservation concerning immigration control; whether certain rules that had been established by the immigration services were not, in fact aimed primarily at controlling immigration from the Indian subcontinent and Africa rather than applying equally to all; whether, contrary to article 9 of the Covenant, persons detained by the immigration services were kept in detention for fairly long periods merely on the basis of administrative decisions; whether such detainees could have recourse to habeas corpus, bail, or other judicial safeguards; whether special measures had been taken by the British Government to prevent discrimination against racial minorities in connection with employment in the public service, including discrimination against certain naturalized citizens; whether children born in the United Kingdom automatically enjoyed United Kingdom citizenship; and whether minorities, particularly Muslims, were free to practise their religion without encountering difficulties.

542. In regard to the question of sexual equality, members wished to receive additional information about the actual enjoyment by women of rights contained in the Covenant, particularly those in article 25, as well as the application of article 3 in such areas as the treatment of women in matters of employment, divorce, child custody, alimony and inheritance. It was also asked whether the Islands of Jersey and Guernsey had taken measures to ensure equality between men and women. One member expressed surprise that the United Kingdom, which had often shown that it favoured the emancipation of women, had not yet ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women. Commenting on certain immigration provisions which had the effect, inter alia, of hindering or preventing family reunification, some members noted that while the United Kingdom’s reservations regarding the Covenant might make such provisions technically permissible, they could not be justified from a humanitarian standpoint.

543. In his reply, the representative of the State party pointed out that the Race Relations Act 1976

and the Sex Discrimination Act 1975 prohibited any form of discrimination based on race. Persons who considered themselves victims of such discrimination could resort to the courts for redress and could receive legal and other help in pursuing the matter from the Commission for Racial Equality and the Equal Opportunities Commission. However, those Acts did not apply to immigration control. The United Kingdom's reservation in that regard was intended to protect the right of the British Government and Parliament to legislate in the area of immigration control, particularly in view of the imperative need to protect the British labour market, which was experiencing a high level of unemployment. That was the principal reason for making distinctions between the sexes in cases of family reunification and for controlling the entry of persons, principally from east Africa, who had British citizenship but no other ties with the United Kingdom. The question of granting British nationality and residence to persons from other countries was a thorny one, but there were compelling economic and social reasons for the restrictions that were being applied.

544. The representative categorically denied that the British Nationality Act was administered in a discriminatory manner, noting that thousands of Indians and black British subjects were currently enjoying all the rights provided under that Act. If the immigration regulations placed more restrictions on immigration from India, that was not done in a spirit of racism. Nevertheless, it had been recognized that certain elements of the population, particularly persons originating in the United Kingdom overseas dependent territories, did not enjoy the full range of rights conferred by British nationality, which was perhaps not entirely consistent with article 12, paragraph 4, of the Covenant, but which was unavoidable. The British Nationality Act of 1981 provided that a child born in the country was a British subject by birth if one of his parents was of British nationality or was established in the United Kingdom. The Act was not discriminatory either in principle or in its application. There had been 13,615 naturalizations, the majority involving persons from the West Indies and the Indian subcontinent, during 1984. Applications for entry into the United Kingdom from British overseas citizens numbered 3,448 from India, 334 from Kenya, 323 from the United Republic of Tanzania, 143 from Malawi, and 21 from Zambia. Some 22,000 applications for entry were pending in family reunion cases, the waiting period varying between 2 and 23 months. All British citizens could aspire to civil service employment regardless of the method of acquisition of British nationality.

545. With respect to the actual enjoyment by women of the rights contained in the Covenant, there was no distinction between men and women with respect to the right to vote, eligibility for office and participation in public affairs. Of some 650 members of the House of Commons, 23 were women. That proportion was low but was not the result of discrimination: in the United Kingdom, as in many other countries, women had difficulties in reconciling family life and a professional career and often gave preference to the former. The Government was attempting in every way possible to increase the number of women appointed to public office, but possibilities for action at the structural and regularity levels were limited. Concerning the situation of women in the family context, the man was generally regarded as the head of the family but women were generally granted custody of children in cases of separation. Former husbands were required by the courts to provide means of subsistence to their former wives and children in the light of their own circumstances. Wives could not be disinherited by their husbands. The delay in the ratification of the Convention on the Elimination of All Forms of Discrimination against Women was explained by the fact that, in view of the Convention's complexity, the Government of the United Kingdom

wished to ensure that all its provisions would be applied in law and fact. It was hoped that the Convention would be ratified soon.

546. Regarding the question of detention in British ports, the representative stated that the law did not permit the arbitrary refoulement of a British subject; but, if it was established that a person was an illegal immigrant - the burden of proof on the point resting with the immigration authorities - administrative action could be taken. In general, an illegal immigrant could not be released on bail, but the remedy of habeas corpus was available to all.

547. Responding to other questions raised by members, the representative stated that his Government was monitoring the ethnic composition of the public services; that, while cases of religious or employment discrimination undoubtedly occurred, there was no Government-approved systematic discrimination of any kind; that persons who felt they had been discriminated against could have recourse to courts, such as the labour courts if the problems were of a professional character; and that there was no longer any significant distinction made between the sexes in tax treatment. Concerning the responsibility of his country's authorities for education in the field of discrimination, the representative pointed out that that issue, and the question of racial equality, were regarded by the Home Secretary as matters of special importance.

Right to life

548. In connection with that issue, members of the Committee wished to receive information about any positive measures that had been taken by the United Kingdom on the points raised in the Committee's general comments 6(16) (art. 6) and 14 (23) and about the question of control of the use of arms by security forces. Noting that a connection existed between general comments 6 (16), which dealt with the need to make every effort to avert the danger of thermonuclear war, and article 20 of the Covenant, one member asked why the United Kingdom had not yet adopted a law against propaganda for war. Another member requested additional information concerning the application of section 3 of the Criminal Law Act, which permitted the taking of life to prevent a crime.

549. Responding to questions raised by members of the Committee, the representative of the State party noted, with respect to general comment 6 (16), that members of the British security forces were in no circumstances, except in time of war, authorized to kill in an arbitrary manner. They could only do so for their own immediate protection or for the protection of another, and the legality of the act was subject to determination under a criminal law. The seizure of persons against their will constituted a criminal offence in the United Kingdom. A person could only be imprisoned in accordance with the law and the place of detention could not be kept secret. The National Health Service provided social services to the entire population, generally free of charge, and there was also a system of social security. Thus, the Committee's concerns expressed in paragraph 5 of general comment 6 (16) could be seen as not applying to the United Kingdom. With reference to the United Kingdom's position regarding the general comments adopted by the Committee on article 6, more generally, the representative stated that, while his Government paid close attention to them and held them in high regard, it did not necessarily agree wholeheartedly with everything in them. His feeling that the Committee was not the right forum in which to restate his Government's view concerning disarmament, which had been developed elsewhere, in no way

diminished the importance the United Kingdom attached to the promotion and protection of the fundamental right to life under the Covenant. As to the issue of the elimination of racial discrimination, his Government had recently submitted a full report to the appropriate Committee and it would also be submitting a report shortly concerning the implementation of the International Covenant on Economic, Social and Cultural Rights.

550. With reference to the question on the use of arms by the security forces, the representative explained that arms could only be used as a last resort, after a warning had been given, and only when there was a threat to life. Concerning the use of firearms by police, section 3 of the Criminal Law Act provided that only such use of force as was reasonable under any given circumstance was permissible. In applying the provision and deciding whether reasonable force had been used, the court would always consider the seriousness of the crime and judge whether the force used had been too great in relation to the crime.

Treatment of persons, including prisoners and other detainees

551. Members of the Committee wished to receive information on measures and mechanisms to prevent or to punish treatment contrary to articles 7 and 10 of the Covenant. They asked whether there had been cases of cruel, inhuman or degrading treatment and, if so, whether appropriate action had been taken, whether prisoners or inmates detained in psychiatric institutions could lodge complaints with an independent body, whether the proposed new Police Complaints Authority would also cover prisons, especially persons detained on remand, and about the outcome of complaints concerning the use of corporal punishment in schools. Regarding the Board of Visitors, it was asked what instructions that body operated under; whether, being composed of laymen, it was competent to adjudicate criminal matters; whether its ability to punish a prisoner for making an unjustified complaint did not in fact deter prisoners from lodging complaints; and whether the powers of the Board, which could order solitary confinement of prisoners for up to 50 days on a repeated basis, were not, in fact, too great. Regarding degrading or inhuman treatment, members asked if there had been any debate in the United Kingdom as to whether permitting a prisoner to die as a result of a hunger strike constituted inhuman treatment and whether the use of force by police in searching the private parts of detainees for concealed weapons did not represent degrading treatment prohibited under article 7 of the Covenant or infringement of the right to inherent dignity covered by article 10. Members also requested further clarification as to how consent for psycho-surgery of compulsory detained mental patients was obtained, whether there were specific provisions prohibiting scientific experiments without the consent of the individual concerned, how the procedures of “prior ventilation” and “simultaneous ventilation” actually worked in practice and how the proposals of the Royal Commission on Criminal Procedure were to be implemented, particularly in connection with assuring the independence of the investigatory procedure and the establishment of time-limits for pre-trial detention. In addition, one member asked whether the penitentiary system had proved successful in reforming and rehabilitating prisoners and whether any efforts had been made to modernize prison conditions with a view to achieving such results.

552. In his reply to questions concerning the treatment of prisoners, the representative of the State party said that the United Nations Standard Minimum Rules for the Treatment of Prisoners had been brought to the attention of prison officers, who were also required to observe a Code of

Conduct and Prison Department instructions which were compatible with the Minimum Rules. Body or strip searches were authorized under article 55 of the Police and Criminal Evidence Act 1984 only in cases when a prisoner was suspected of having hidden an object that could cause physical injury and of intending to use it, or was suspected of concealing a dangerous drug such as heroin or cocaine. As to whether it could be considered ethically acceptable to allow a hunger striker to die, the representative explained that the British Government had studied the question carefully 15 years ago and had come to the conclusion that it was better not to interfere in such cases inasmuch as the practice of force-feeding was more inhumane and degrading. Regarding the matter of corporal punishment in schools, views were divided, but under a bill currently before parliament parents would be enabled to exempt their children from corporal punishment if they wished to do so. The view that corporal punishment in schools was actually inhuman or degrading was held only by a minority.

553. In his reply to questions concerning the Board of Visitors, the representative of the State party explained that the members of the Board were advised that they must consider making available legal advice to prisoners appearing before them on serious charges. Although members of the Board were not professional lawyers, some of them were lay magistrates, and at least one such magistrate had to be on the adjudicating panel when a serious offence was involved. It would be wholly inappropriate for the same Board of Visitors to consider a complaint against a prison officer and then to determine whether the allegation had been false or malicious. The procedure governing the handling of false and malicious allegations was under review, as were the entire disciplinary system in custodial institutions and the arrangements relating to the imposition of solitary confinement.

554. Concerning the treatment of mental patients without their consent, he said that patients or relatives desiring to make complaints in that regard could do so to the Mental Health Act Commissioners or the Health Service Commissioner. The administration of treatment to such patients was subject to the Health Hospital Guardianship and Consent to Treatment Regulations (1983) and required the consent of a medical practitioner appointed by the Mental Health Act Commission. Referring to the question of simultaneous and prior ventilation, the representative explained that, under the new procedure, prisoners could write to anyone outside the prison at the same time as they lodged a complaint within the prison system, rather than having to wait for the outcome of the internal proceedings as in the past. Prisoners did not have first to ventilate their complaints internally if they wished to take legal action and could contact their legal advisor straightaway.

555. With regard to the independence of investigations of complaints against the police, under the new procedures personnel from the complaints authority could supervise the investigation, which would still be carried out by the police though not by an officer who had any connection with the alleged incident. As to the matter of pre-trial detention time-limits, the representative pointed out that the relevant provisions of the Police and Criminal Evidence Bill were in the form of powers given to the Secretary of State to impose time-limits through subordinate legislation. Experiments would be required in selected courts to see what effect such time-limits would have. Finally, responding to a member's question concerning the rehabilitative effect of imprisonment, the representative explained that there was considerable disillusionment on that score and the prison

service no longer claimed to be able to make a real difference to a prisoner's outlook or personality. Courts were encouraged to set custodial sentences in relation to the gravity of the offence and not in relation to the benefit that a prisoner might derive from treatment or training while in prison. Accordingly, it was recognized that although constructive education and training programmes should be made available to all prisoners, greater emphasis was placed on treating young offenders and helping them to obtain qualifications.

Liberty and security of the person

556. With reference to that issue, members of the Committee wished to receive information on the circumstances and periods for which persons might be held in preventive detention without being charged with a criminal offence; on detention in institutions, including psychiatric institutions, other than prisons; on remedies available to persons (and their relatives) who felt that they were being wrongfully detained and on the effectiveness of such remedies; on the observance of article 9, paragraph 2 and 3, of the Covenant, particularly regarding prompt judicial control of conditions of arrest and detention; on the maximum period of detention pending trial and on contact between arrested persons and lawyers. It was also asked whether families were promptly informed of an arrest and whether the "codes of practice" were merely instructions to the police or were envisaged as having the force of law.

557. Concerning habeas corpus, it was asked what the powers of judges were in such proceedings; what the role of the courts was and what the purpose of saving the remedy of habeas corpus was in matters envisaged by the Police and Criminal Evidence Bill; whether any consideration had been given to codifying the remedy of habeas corpus itself; whether habeas corpus proceedings had ever been adjourned to enable the authorities involved to be legally represented; whether persons detained under section 12 of the Prevention of Terrorism Act 1976, which allowed detention for up to seven days prior to presentation before a court, were not in fact effectively deprived of their right of recourse to habeas corpus; and whether a writ of habeas corpus was restricted to determining the validity of a detention order or could also constitute an appeal against continued detention.

558. Members also requested additional information on the administrative or judicial regime governing the detention of aliens who had been refused entry into the United Kingdom or expelled but who were unable to depart immediately. They asked in particular what legal remedies were available, what the maximum period, if any, of such detention was, and at what stage the legal authorities became involved in such cases. They also asked whether persons could be detained for administrative reasons other than those arising under the immigration laws and whether persons unlawfully arrested or detained had an effective right to compensation, as provided in article 9, paragraph 5, of the Covenant.

559. In his reply, the representative of the State party explained that under the Police and Criminal Evidence Act 1985 a person detained for questioning had to be released within 24 hours, extendable to a maximum of 96 hours on the authority of a magistrates' court, that a detainee's relatives and lawyers had to be informed of the detention immediately, and in any case no later than within 36 hours; and that a detainee had to be brought before a court as soon as possible after being charged, usually a magistrates' court on the following day. In Northern Ireland, the police could detain suspected terrorists for questioning for up to 72 hours. Detainees could be held without bail

for seven days at a time and there was no specific time-limit on the period that bail could continue to be denied, except that eventually statutory time-limits for detention would be reached. The remedy of habeas corpus was available to prisoners who believed that they were being improperly detained, and the Police and Criminal Evidence Act would make it easier for them to start such proceedings. If they succeeded, applicants would have the right to seek compensation through the courts for false imprisonment. The remedy of habeas corpus was also available to detained foreigners, who could only be held pending a decision on their case. In extreme cases of prolonged detention of foreigners, the court could order the detainee's release. Courts could adjourn proceedings for habeas corpus for several days when a full judiciary hearing, in which the detaining authority would usually be required to defend its action, had been ordered by a judge. As to the judicial recourse available to would-be immigrants, the representative explained that those who had been refused admittance had the right of appeal only after leaving the country, whereas those first admitted and then ordered deported could appeal both to immigration appeal authorities and ultimately to the courts through the judicial review procedure. Bail might also be granted pending appeal.

560. In response to questions raised by members of the Committee concerning detentions under section 12 of the Prevention of Terrorism Act 1984, the representative stated that persons suspected of involvement in terrorism could be held by the police for up to 48 hours, a period that could be extended by the Home Secretary for an additional five days. That provision did not deprive such detainees from availing themselves of the remedy of habeas corpus, although it was true that such persons might find it difficult to establish before a judge that their detention was unreasonable. There was no longer any provision in the United Kingdom for administrative detention except in cases of illegal immigration.

Right to a fair trial and equality before the law

561. With reference to that issue, members of the Committee wished to receive information concerning any observations the United Kingdom might have made in respect of the Committee's General Comment 13 (21). They asked whether legal aid was provided for in both civil and criminal cases; about rules for granting compensation in accordance with article 14, paragraph 6, of the Covenant; about cases in which the trial could be deferred by Crown Courts beyond the eight-week limit established in the Supreme Court Act 1981; whether the Emergency Powers Acts 1976, which was in force in Northern Ireland, authorized the use of methods to secure confessions that would not be permissible under common law and whether the Criminal Appeal Act 1968 conformed to the requirement in article 14, paragraph 5, of the Covenant regarding right of appeal to a higher tribunal. With reference to article 14, paragraph 6, members expressed regret that there was no statutory basis in the United Kingdom for the right of compensation for miscarriages of justice and urged that appropriate measures be taken to ensure full compliance with that article.

562. In his reply, the representative of the State Party said that the United Kingdom had borne the Committee's general comments in mind when drawing up its reports and pointed out that the second periodic report should be read in the context of the initial report, in which most of the issues covered by the general comments had been discussed. The United Kingdom believed that its laws and practices were essentially in conformity with article 14, 15, 16 and 26 of the Covenant. In the

case of article 14, paragraph 6, while it could be considered that the article was not applied to the letter, since the compensation system that had been established did not have the force of law, it was nevertheless clear that the system did conform to the spirit of paragraph 6 since it operated within clearly defined rules from which the Home Secretary could not easily derogate without running a high risk that his decision would be reversed by the courts.

563. With regard to the question of legal aid, the representative stated that such aid was available in British courts in both civil and criminal cases provided that the litigant's income and capital did not exceed certain financial limits. According to estimates, some 70 per cent of the population would qualify for legal aid on financial grounds. In determining whether or not legal aid should be granted, the seriousness of a cases was also an important factor, particularly if the accused faced serious consequences such as a prison sentence or loss of employment. As to the implementation of article 14, paragraph 3 (g); of the Covenant, it was true that the rules under the Northern Ireland Emergency Provisions Act were not as favourable to the accused as under English Law and that suspected terrorists could at times be subjected to long interrogations. However, that Act expressly prohibited the use of torture or any inhuman or degrading treatment to obtain confessions and no one was compelled to testify against himself or to confess guilt. Concerning the question of Crown Courts delaying the opening of a trial beyond the eight-week maximum, he explained that such delays occurred primarily in cases in which a defendant had not sufficient time to prepare his defence or if the cases was exceptionally complex; the court was not then bound to set any time-limit for the opening of the trial. However, the general question of time-limits was under review.

Freedom of movement and expulsion of aliens

564. With reference to that issue, members of the Committee asked whether the United Kingdom's reservations concerning immigration matters were intended to exclude from the Committee's purview all immigration-control related matters arising under any of the Covenant's provisions and whether there had been any violations of Race Relations Act 1976 regarding the right to enter one's own country. Members also requested further clarification of the extent to which account was taken in practice of the 1951 United Nations Convention relating to the Status of Refugees, which had promulgated the principle of "non-refoulement", as well as concerning extradition practices and the meaning of the term "expulsion" in United Kingdom law.

565. In his response, the representative of the State party said that, while his country's reservation did, in fact, apply to all aspects of immigration control, they did not mean that all the conditions concerning such control were incompatible with the provisions of the Covenant. Except for the distinction drawn between men and women for certain purposes and the situation of overseas citizens as far as admission to the United Kingdom was concerned, immigration control conditions appeared to be consistent with the provisions of the Covenant. The Race Relations Act was not applicable in matters concerning immigration control, but it was clear from the relevant regulations that such control should be carried out without racial discrimination. As to the question regarding the Geneva Convention, he said that the rights of the refugees were fully protected in the United Kingdom and in no cases could a person be expelled to a country in which he might expect to be persecuted. The term "expulsion" was not used in United Kingdom law and undesirable persons

could be expelled only through refusal of entry, deportation or extradition.

Interference with privacy, family etc.

566. With reference to that issue, members of the Committee wished to receive information on measures taken to prevent arbitrary or unlawful interference with privacy, such as wire-tapping; on the types of recourse that were available to victims of the infringement of privacy other than that provided under the Data Protection Act 1984. It was also asked whether the Interception of Communications Bill protected the right of individuals sufficiently, whether the registration of data on the whole population would not lead to violations of article 17 of the Covenant, whether the Immigration Rules of 15 February 1983 affected the right of the family to stay together and whether it distinguished between men and women, and whether the volume of prisoners' correspondence could be restricted.

567. In his reply, the representative of the State party explained that there was no general right to privacy and no general remedy against invasions of privacy in the United Kingdom, but there were remedies for specific breaches under the Law on Trespass, the Law on Defamation and the Law on Breaches of Confidence. The interception of postal or telephone communications was considered an offence and a measure was currently before Parliament, the Interception of Communications Bill, which would define the conditions for lawful interception of communications and protect the right of individuals to take legal action in cases of abuse. The practice of data registration was specifically intended to protect privacy by limiting access to information about individuals and was in fact expressly designed to ensure the implementation of the provisions of article 17 of the Covenant. As to the question concerning the right of the family to stay together, the representative confirmed that the Immigration Rules of 15 February 1983 made a clear distinction between men and women, and acknowledged that, while their purpose was not to hinder the reunion of members of a family, they could have the practical effect of preventing members of a family from living together in the United Kingdom. With regard to prisoners' correspondence, he pointed out that, although the number of letters that could be examined under the censorship procedure was necessarily limited, there were no problems in the United Kingdom in that regard.

Freedom of thought, conscience and religion

568. With reference to that issue, members of the Committee wished to receive information on discrimination on religious grounds, particularly in Northern Ireland, where the Fair Employment Agency was seeking to promote equal employment opportunities, and on the results of the Law Commission's study of offences against religion and public worship, including blasphemy.

569. In responding, the representative of the State party said that the Fair Employment Act 1976 was expressly aimed at outlawing all religious discrimination in employment. In addition to the efforts of the Fair Employment Agency in that regard, the Northern Ireland Manpower Department had published a Guide to Manpower Policies and Practices which provided, *inter alia*, that public contracts with private companies should be restricted to companies that did not practise discrimination. Since its establishment in 1976, the Fair Employment Agency had received 436 complaints of discrimination, of which 257 had been investigated, with unlawful discrimination

being found in 32 cases. The Law Commission's study of offences against religion and public worship, including blasphemy, was not yet complete.

Freedom of opinion and expression; prohibition of war propaganda and advocacy of national, racial or religious hatred

570. With reference to those issues, members of the Committee wished to know about ownership, influence and control of the media; whether there was any form of censorship of the media, works of art, or other creative works on the grounds of decency and whether there was any control over the production and sale of videotapes; whether there had been any cases of arrest and detention for the expression of political views, particularly prosecutions of people who spoke out against nuclear weapons and in favour of peace, or police measures against peace activists, trade-union members or striking workers publicly expressing their opinions. They also asked about the new rules concerning contempt of court and reporting on trials by the press, the results of the Law Commission's study of sedition and allied offences; and they inquired whether the United Kingdom intended to withdraw its reservation relating to article 20 of the Covenant in the light of the Committee's general comment 11 (19). One member requested information on the number of cases in which proceedings had been instituted by the Attorney-General since 1976 under section 5A of the Public Order Act, which had made it a criminal offence to stir up racial hatred.

571. In his reply, the representative of the State party explained that there was no censorship as such in the United Kingdom, but that there were some restrictions in certain circumstances on what could be published and a number of statutory provisions had been designed to protect the public from indecency and from inflammatory material. The production and sale of videotapes were controlled under the Indecent Displays Control Act 1981 and the Video Recording Act 1984. There was no restriction in the United Kingdom on the expression of political views and cases of arrest and detention for such expression were unknown. In certain cases, when the police had been obliged to arrest demonstrators, the arrests had been made solely with a view to restoring public order and had had nothing to do with the ideas expressed by the demonstrators. The restrictions in effect on the press coverage of particularly controversial trials were applied in cases in which it was deemed that publication could hinder court proceedings. The Contempt of Court Act 1981 had reduced the length of the period during which such restrictions could be applied. The Law Commission's study on sedition and allied offences, a question which had not been accorded high priority, was progressing slowly and it was not possible to give precise information thereon.

572. Concerning the United Kingdom's reservation relating to article 20 of the Covenant, the representative stated that his country did not intend to withdraw that reservation because it was not planning to introduce the kind of legislation that article 20 seemed to require. War propaganda was not a problem in the United Kingdom and therefore no need was seen for legislation of the subject. Likewise, no additional legislation, beyond the provisions in the Race Relations Act and the Public Order Act, was currently planned in the area of prohibiting incitement to national, racial or religious hatred, and the aim of the existing laws was not so much to prohibit the expression of ideas as to avoid any disorder that could result from the expression of those ideas.

Freedom of assembly and association

573. With reference to that issue, members of the Committee wished to receive information regarding the compatibility of the closed shop system with article 22 of the Covenant, the actual application of legislation guaranteeing reinstatement or compensation for employees unfairly dismissed for membership of an independent trade union and the existence of any legal machinery for verifying implementation of the principle of safeguarding national security. It was also asked why there was no legal prohibition in the United Kingdom of racist and neo-Fascist assemblies, organizations and activities.

574. In his reply, the representative of the State party said that under recently introduced legislation it was possible for employees themselves to decide whether or not they wished to adopt the closed shop system; that in cases of appeals against wrongful dismissal the tribunals generally ordered compensation rather than reinstatement which, in a situation of high unemployment, was admittedly not as just as reinstatement would be; and that judicial review was available against administrative decisions taken on grounds of national security, although courts were traditionally inclined to leave such matters to the competence of the Minister concerned. As to why the laws did not expressly prohibit assemblies, organization and activities of a racist and neo-Fascist character, the representative reiterated his response to an earlier question, namely, that it was because the legislative goal in the United Kingdom was not to prohibit the expression of ideas but to avoid any resulting disorder.

Political rights

575. With reference to that issue, members of the Committee asked how political rights were exercised and what restrictions there were on such rights; whether the imposition of a nationality test on candidates for public office and on their parents did not constitute racial discrimination and what types of recourse were available to those who had been refused access to, or who were removed from public office.

576. In his reply, the representative of the State party explained that, in principle, there was no difference between the public service and other employment and persons who failed to be selected for a post had no redress unless the grounds for the exclusion were racial or sexual. A dismissed civil servant, like anyone else, had access to redress through the tribunals.

General observations

577. Members of the Committee thanked the United Kingdom delegation for its co-operation and for its detailed answers, which had provided valuable information demonstrating the achievements of the United Kingdom in implementing the Covenant.

578. Members appreciated the efforts made by the United Kingdom to find ways of implementing its commitments under the Covenant through its own traditional system, as well as the withdrawal of its derogations from the Covenant relating to the states of emergency in Northern Irish affairs. It was, however, felt that there were still gaps in the implementation of certain articles of the Covenant and with regard to a comprehensive system of remedies.

579. Several members stressed that additional written laws and a statutory Bill of Rights could improve the system of protection of human rights and better define adequate guarantees and remedies.

580. The Chairman, in concluding consideration of the second periodic report of the United Kingdom welcomed the very satisfactory manner in which the dialogue with the United Kingdom had continued and warmly thanked the delegation for its constructive role in that dialogue and its efforts to provide detailed replies.

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140. The Committee considered the second periodic report of the United Kingdom of Great Britain and Northern Ireland - Dependent Territories (CCPR/C/32/Add.14 and 15) at its 855th to 857th meetings, held from 3 to 4 November 1988 (CCPR/C/SR.855-857).

141. The report was introduced by the representative of the State party who expressed regret over its late submission, which was explained by the necessity of having each of the 10 individual Territories compile its own report and then of having to combine all of them into one report. He noted that one of the Territories examined during the Committee's consideration of the initial report - Belize - had acquired independence in 1981 and was therefore not covered in the second periodic report.

142. In 1987, the Government of the United Kingdom had reviewed its policy towards its Caribbean dependent territories and Bermuda and had concluded that it should not seek to influence opinion in the Territories on the question of independence but remain ready to respond favourably when the people expressed their wish for such independence. That position, announced in Parliament on 16 December 1987, had been given widespread publicity in the Territories concerned. The Government remained determined to discharge its obligations under the Covenant in full, even when that meant the temporary suspension of ministerial government, as had been necessary in the Turks and Caicos Islands in 1986.

143. With reference to Hong Kong, which under the 1984 Sino-British Agreement was to revert to the People's Republic of China on 1 July 1997, the representative drew attention to three specific developments of special relevance to the human rights field. The first of these was the publication, in February 1988, of the Hong Kong Government's White Paper on the further development of representative government, which announced the introduction of directly elected members to the Legislative Council in the next round of elections in 1991. Secondly, the first draft text of the Basic Law of Hong Kong, which is to serve as the Territory's Constitution after 1997, was published in April 1988. The Chinese authorities had conducted thorough and open consultations to give the people of Hong Kong an opportunity to express their views on that text and the Government of the United Kingdom - which had the right under the Sino-British Joint Declaration of 1984 to satisfy itself that the Basic Law, including its human rights provisions, faithfully reflected the principles enshrined in the Joint Declaration - had played a full part in ensuring that the views of the people concerned were well understood by the Chinese authorities.

144. Lastly, the representative noted that after providing temporary refuge to more than 130,000 Vietnamese boat people since 1979, the Hong Kong authorities had been obliged to introduce, on 16 June 1988, a new screening procedure to determine whether new arrivals were genuine refugees or simply migrants in search of a better life overseas. Non-refugees would not qualify for resettlement and would remain in Hong Kong only until satisfactory arrangements had been made for their return to their country of origin. The United Kingdom was continuing its efforts to resettle the 16,000 boat people in Hong Kong who qualified as refugees and the Hong Kong authorities

were considering measures to liberalize the conditions under which they were living, including the possibility of lifting restrictions on their freedom of movement to enable them to take advantage of education, employment or other opportunities.

Constitutional and legal framework within which the Covenant is implemented

145. With reference to that issue, members of the Committee wished to receive information on the mechanisms employed in the various dependent Territories to harmonize, in case of conflict, the Covenant and domestic law and on any cases where the Covenant had been invoked before the courts; on any recent constitutional developments concerning the relationship between the United Kingdom and the dependent Territories; and on activities that had been undertaken within the territories to promote greater public awareness of the provisions of the Covenant. In the latter connection - and particularly in relation to Hong Kong - members wished to know whether the Government of the United Kingdom was endeavouring to foster awareness through such means as having the rights covered in the Covenant taught in schools and universities and making the text of the Covenant freely available in Chinese translation; whether any measures had been taken to inform the people of the fact that the Human Rights Committee was about to consider the second periodic report on Hong Kong; and whether any effort would be made to give publicity to the Committee's discussion of that report.

146. In view of the reservation of Hong Kong to China in 1997, pursuant to the 1984 Sino-British Joint Declaration, members of the Committee expressed special interest in knowing how the rights currently enjoyed under the Covenant by the people of Hong Kong were to be guaranteed in the future and devoted most of their questions to that topic. They wished to know, in particular, what specific measures would be taken to give effect to article 38 of the draft Basic Law, which stated that the provisions of the International Covenants on Human Rights, as applicable to Hong Kong, would remain in force; what action the Government of the United Kingdom proposed to take to secure or increase the applicability of the Covenant so as to ensure that the people of Hong Kong would enjoy a maximum of enforceable rights after the territory's reversion to China; and whether the initiative to incorporate the Covenant in Hong Kong's legal régime was still continuing.

147. Concerning that China had not yet become a party to the Covenant and the Optional Protocol, that many important rights provided for in the Covenant such as the right to life and to a fair trial and the prohibition of torture, slavery and forced labour were not mentioned in the draft Basic Law, and that the applicability of the Covenant was restricted in several respects by virtue of the United Kingdom's reservations to certain articles, members wondered whether it would not be possible to enact legislation in Hong Kong or to amend the Letters Patent prior to 1997 to secure to the people of Hong Kong all the basic rights guaranteed under the Covenant, or to incorporate and entrench in the Basic Law of Hong Kong a complete chapter setting out the fundamental rights recognized in the Covenant and to provide for the justifiability of those rights by an independent judiciary. It was suggested, in the latter connection, that questions relating to the appointment and tenure of judges should also be specifically addressed in the Basic Law. One member further suggested, in connection with article 159 of the draft Basic Law, that human rights should be included among the "appropriate fields" in respect of which the Hong Kong Special Administrative Region could maintain and develop relations and conclude and implement agreements with States, regions and

relevant international organizations.

148. Additionally, members wished to know what role common law would have after 1997, if any; how the independence of the judiciary would be guaranteed in the light of article 169 of the draft Basic Law, which conferred the power to interpret the Basic Law on the Standing Committee of the National People's Congress; whether judges in Hong Kong were empowered to undertake a judicial review of administrative decisions and, if so, whether they would retain that power after 1997; whether any legislation had been enacted in Hong Kong to outlaw discrimination on grounds of race and whether administrative or legislative provisions made any distinctions along racial lines; and whether the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been extended to any of the dependent Territories.

149. In his reply, the representative of the State party said that the Covenant was implemented in the Territories within the framework of local Constitution and any gaps with regard to the protection of some rights under common law were offset by the application of other legislative and other measures. His Government had entered certain reservations when ratifying the Covenant, but had otherwise satisfied itself that it was being implemented in all Territories. The Foreign and Commonwealth Office in London monitored the laws within the dependent Territories and, if necessary, could request that any law contrary to treaty obligations, be amended or repealed. There were no special methods for increasing public awareness of the Covenant's provisions. However, in the Falkland Islands, the provisions of the chapter I of the Constitution, which were very similar to those of the Covenant, were frequently debated in the Legislative Council. In Gibraltar, the rights set forth in the Covenant were guaranteed by the Constitution and the population was fully aware of that fact. In Hong Kong, the wide-ranging debate on the drafting of the Basic Law had been widely commented on by the media and there was no doubt that the population was fully aware of the Covenant's provision. In Montserrat, seminars and lectures were organized to comment on the provisions of the Covenant. In Pitcairn, the Administration was willing to make available free of charge the text of the Covenant to anyone wishing to study it. In the Turks and Caicos Islands, the new 1988 Constitution reflected the provisions of the Covenant relating to human rights and had been widely studied and commented on prior to its adoption. Extracts from the Covenant were often published in the Chinese press in Hong Kong and quoted during debates in the Legislative Council. The population in all Territories had been informed of the Committee's meetings and consulted during the drafting of reports. The summary records of the Committee's meetings were also sent to the Governments of the Territories.

150. Turning to questions relating to the future of human rights in Hong Kong after 1997, the representative recalled that the drafting of the Basic Law was the sole responsibility of the Government of the People's Republic of China. It was too early to know precisely what the provisions of the Basic Law would be. Chapter 2 of the Joint Declaration on Hong Kong stated that common law would continue to apply after 1997 and that the legislation previously in force would be retained. Article 38 of the draft Basic law provided that the provisions of the International Covenants on Human Rights would continue to be implemented but the question of how the Covenants would be incorporated into the legislation was complex and would need to be examined by the Sino-British Liaison Group. Under the Joint Declaration it had also been agreed that judicial review would continue to be available after 1997. The question of whether the

reservations relating to Hong Kong would be maintained after 1997 was a matter for the Chinese Government.

151. Responding to other questions, the representative said that the objective of the Immigration Ordinance, which referred to persons “of Chinese race”, was to define persons who were citizens of Hong Kong and thereby to remove the inequality of about 60 per cent of the persons earlier described as “Hong Kong nationals”, who had only been entitled to live and work in Hong Kong but did not have the right of abode. The Government of the United Kingdom kept its reservations to the Covenant under review and intended to maintain them as long as they were needed. It also planned to ratify the Convention against Torture by the end of 1988 and had already begun consultations with the dependent Territories, on its application to them.

Self-determination

152. With regard to that issue, members of the Committee wished to know what mechanisms, if any, existed for ascertaining from time to time the wishes of the people in the dependent Territories in respect of self-determination; what measures had been taken by the dependent Territories to prevent public and private support for the apartheid régime of South Africa; what long-term solution was being planned to protect the rights of the inhabitants of the Falkland Islands to food and health; and whether the people of Gibraltar could claim the right to independence under article 1 of the Covenant notwithstanding the provisions of the treaty of Utrecht. In the latter connection, one member pointed out that both the United Kingdom and Spain had an obligation, under article 1 of the Covenant, to promote the realization of the right to self-determination of the people of Gibraltar and that the latter could conceivably claim the right to independence. With regard to Hong Kong, specifically, members wished to know whether the authentic text of the Basic Law would be Chinese and, if so, whether that might not give rise to some problems since certain legal concepts might be difficult to express in that language; whether consideration was being given to the situation of some non-Chinese population groups who might have nowhere to go in 1997; who would be entitled to take part in the electoral process for choosing the President of the Executive Council and what measures would be taken to ensure that the choice of the electorate would prevail; how the consultation process leading to the Sino-British Joint Declaration had been carried out and whether the population had had the chance to show its approval of the decisions taken by means of a vote; whether the Declaration on the Granting of Independence to Colonial Territories and Peoples was applicable to Hong Kong; how long it was expected to take to establish a genuinely representative government in Hong Kong and whether it was intended that in elections to be held between 1991 and 1997 the majority of the members of the Legislative Council would be directly elected; and whether consideration was being given to incorporating the Joint Declaration into the Basic Law of Hong Kong.

153. In his reply, the representative of the State party said that democratic elections were held in the dependent Territories every four or five years and both the electorate and the candidates had the opportunity at such elections to express their views on constitutional change, including the constitutional link with the United Kingdom and the question of independence. In the past many territories that had belonged to the United Kingdom had become independent after their populations had voted for parties calling for independence, but at present Bermuda was the only

dependent Territory where a lively debate on independence was under way. There was at present no clear-cut majority in favour of independence in that Territory but any party could propose that option at the forthcoming elections or the Government of Bermuda itself could, if it wished to do so, organize a referendum on the question. In the case of Gibraltar, the referendum in 1967 on the Territory's future, which only provided the option of retaining the existing constitutional relationship with the United Kingdom or of passing under Spanish sovereignty, resulted in a 99 per cent majority for the retention of the existing relationship with the United Kingdom. After such a result, a third option - that of independence - was now mainly speculation. The Government of the United Kingdom was, however, certainly not standing in the way of the implementation of the Covenant in Gibraltar. As to the question of support for apartheid, the representative noted that foreign policy questions were the responsibility of the United Kingdom and not of the dependent Territories. The Government of the United Kingdom had repeatedly deplored the system of apartheid and had taken a number of measures, in co-operation with Commonwealth and European Community countries, to oppose the South African régime. The Falkland Islands were to a large extent self-sufficient in food and there were frequent air and sea links with the United Kingdom through which other needs could be met. A large, modern and well-equipped hospital had just been opened at Port Stanley. The Territory obviously needed links with the South American continent and it was not its fault that it had proved difficult to establish such links.

154. Responding to questions relating to Hong Kong, the representative explained that the draft agreement that had emerged from the Sino-British negotiations during 1983 and 1984 had been circulated in Hong Kong and the assessment office that had been set up to evaluate public opinion had found that the draft had been widely welcomed and was held to represent the best possible solution in the circumstances. The United Kingdom's signature of the Sino-British Joint Declaration in late 1984 had occurred in that context. In 1987, the population of Hong Kong had also been consulted, through the publications of a Green Paper, on the system of representative government in the Territory and the views then expressed had been fully taken into account in the Hong Kong Government's decision to introduce direct elections in 1991 for 10 members of the Legislative Council, which represented a major change from the previous system of an appointed legislature. Two further elections were to be held between 1991 and 1997. Continuing development of representative government would be necessary between 1991 and 1997 to ensure that the system evolved steadily to provide continuity and a smooth transition to 1997. The Basic Law, which was to be enacted in 1990, would provide an appropriate framework for that change. The authentic text of the Basic Law would probably be in English as well as in Chinese. Since the final form of the Basic Law was not yet known it was difficult to give an opinion as to the possible role of the Chinese authorities in the selection or appointment of the President of the Executive Council or of any members of the Legislative Council. As yet there were no definite proposals concerning non-Chinese minorities and suggestions by the Committee would be particularly welcome.

Non-discrimination and equality of the sexes

155. With regard to that issue, members of the Committee wished to receive additional information concerning equality of the sexes in the field of education, employment and public life in the various dependent Territories other than Bermuda.

156. In his reply, the representative of the State party said that the policy of the Governments of the dependent Territories was one of equality of opportunity in education, employment and participation in public life. The 1986 census in the Falkland Islands had shown that 393 women were employed in a wide range of sectors while 303 women remained at home. In Hong Kong, employment Ordinance No. 2 guaranteed employees of both sexes equal rights and social benefits. Three of the six Permanent Secretaries in Montserrat and two of the five Permanent Secretaries in the British Virgin Islands were women. In the Turks and Caicos Islands, 60 per cent of civil servants, 51 per cent of pupils and 70 per cent of the teachers were women.

State of emergency

157. With reference to that issue, members of the Committee wished to know what subsidiary legislation had been adopted in the dependent Territories regulating the exercise of the powers of the Governor-in-Council under the Emergency Regulations Ordinance; whether any consideration had been given in Hong Kong to including the provisions contained in article 4 of the Covenant in the Emergency Regulations Ordinance or in the draft law on the implementation of the Covenant that had been under preparation at one time; whether a state of emergency had been declared in the Falkland Islands in 1982; and whether any article of the Covenant had been derogated from by the United Kingdom authorities after regaining control of the Falkland Islands.

158. In his reply, the representative of the State party said that subsidiary legislation relating to the exercise of the powers of the Governor-in-Council had been adopted only in Hong Kong and Gibraltar and copies of the text of such regulations would be provided to the Committee. Regulations of that type were also being drafted for the Falkland Islands but there had been no need thus far for similar legislation in the other dependent Territories. The Emergency Regulation Ordinance for Hong Kong, which had been enacted in 1967, did not allow any derogations other than those permitted by the Covenant and had never been invoked. The idea of drafting human rights legislation to give effect to the provisions of the Covenant in Hong Kong had not been abandoned. There had been no derogations from any of the articles of the Covenant after the United Kingdom regained control of the situation in the Falkland Islands in 1982. The events in that year in the Falklands had occurred so suddenly that the British Governor had not had time either to proclaim a State of emergency or to notify the other States parties.

Right to life

159. With regard to that issue, members of the Committee wished to know whether any consideration was being given within any of the dependent Territories to the abolition of the death penalty and what the results had been of the inquiry into the incidents that had led to the death of three Irishmen in Gibraltar. Members also wondered whether the death penalty was governed by common law or by a legislative text and expressed concern that the Basic Law being drafted for Hong Kong did not contain any provisions on the right to life.

160. In his reply, the representative of the State party said that none of the dependent Territories were currently contemplating the abolition of the death penalty. The question was most recently

considered in Bermuda and in the Falkland Islands, in 1981 and 1985 respectively, and in both instances it was ascertained that the majority of the inhabitants favoured the retention of the death penalty. However, no person had been executed in any of the Territories for a very long time and the legislation of all the Territories provided for the commutation of death sentences. The crime of murder came either under common law or under a provision of the Penal Code determining the penalty, but even whether the imposition of the death penalty was mandatory the Governor could commute it.

161. Although the draft Basic Law for Hong Kong did not include a specific provision on the right to life it did contain articles that were specifically intended to guarantee human rights. A provision of the draft Basic Law would enable the implementation of the Covenant through a legal text to be promulgated by the Hong Kong Government and, in that case, the right to life would be provided for. It was also worth recalling that a new revised draft text was still to be prepared before the Basic Law was finally enacted.

162. The circumstances of the death of three members of the Irish Republican Army (IRA), who had been preparing to plant a bomb in a public place in Gibraltar, had been thoroughly investigated and a jury, by majority verdict, had decided that those who had opened fire on the IRA members had acted lawfully. The Attorney-General of Gibraltar and the Director of Army Legal Services had also separately concluded, after hearing particularly detailed testimonies, that there were no grounds for prosecution.

Treatment of prisoners and other detainees

163. With reference to that issue, members of the Committee wished to know whether resort to corporal punishment, such as whipping, flogging and birching, in certain dependent Territories was compatible with article 7 of the Covenant; whether detainees, such as persons held under the Independent Commission Against Corruption Ordinance in Hong Kong, had the right to appeal on adverse judgement concerning their detention; and whether the various dependent Territories complied with the United Nations Minimum Rules for the Treatment of Prisoners. Members also wished to receive additional information concerning the role and degree of independence of the new Commissioner for Administrative Complaints who was expected to be appointed in Hong Kong and about the appropriateness of the provisions of the Crimes Ordinance of Hong Kong relating to loitering and to the stop-and-search powers of the police.

164. In his reply, the representative of the State party said that the use of corporal punishment had considerably diminished in recent years and that his Government was in consultation with the relevant authorities and was encouraging them to review the matter. All detainees in Hong Kong, including those held under the Independent Commission Against Corruption Ordinance, who had been refused bail, could apply to a high court judge seeking release on bail or a writ of habeas corpus if the lawfulness of continued detention was contested. Following conviction by a magistrate in Hong Kong a person could appeal to a superior court against both the conviction and the sentence. Similar rights of appeal were available to detainees in other dependent Territories. Every effort was made to put into effect wherever practicable, in the dependent Territories as well as in the United Kingdom, the United Nations Standard Minimum Rules. It was planned that the

Commissioner for Administrative Complaints in Hong Kong would be independent from the executive and it had been proposed that the first incumbent of that new office should be a former judge of the high court. The Law Reform Commission had already reviewed or was about to review the provisions of the Crime Ordinance of Hong Kong relating to loitering, “stop and search” and detention.

Right to fair trial

165. Regarding that issue, members of the Committee wished to know how soon after arrest a person was informed of any criminal charges; how soon he was entitled to contact his lawyer and family; and whether there had been many cases in Hong Kong where persons held in preventive detention had not been presented to a court. Members also wished to receive information concerning an incident involving alleged ill-treatment that had occurred in a detention centre for Vietnamese asylum seekers in Hong Kong on 18 July 1988.

166. In his reply, the representative of the State party explained that a person was informed of the reason for his arrest at the time of arrest and if not released, or released on bail, had to be brought before a magistrate normally within 24 hours, at which time the charges against him would be read and explained. An arrested person was usually allowed to inform his family and lawyer immediately, except where that might unreasonably hamper the investigation or the administration of justice. However, such a restriction could only be temporary and a person could contact his family and lawyer, in practice, before being brought to court. Preventive detention, as such, did not exist in the dependent Territories but persons had, on occasion, been detained for questioning for longer than usual periods before charges were brought. The incident in Hong Kong on 18 July 1988 had been the object of an independent inquiry, which had recognized that the staff of the Correctional Service Department - who had been operating under great pressure - had used unnecessary force. The Hong Kong Government was currently examining operational procedures and considering whether disciplinary action should be taken against the staff concerned. As indicated in paragraph 144, the Hong Kong authorities were progressively liberalizing the conditions under which refugees were living in Hong Kong, including lifting restrictions on freedom of movement. Persons not recognized as refugees and living in detention centres were entitled to leave Hong Kong if they wished but the majority did not have the facilities to do so.

Freedom of movement and expulsion of aliens

167. With reference to that issue, members of the Committee wished to know whether an appeal against an expulsion order generally had a suspensive effect; whether a person due to be expelled was allowed sufficient time to prepare his defence and protect his rights, as provided for in article 13 of the Covenant; and what arrangements currently applied to travel among the dependent Territories and between them and the United Kingdom. Members also requested clarification of the current practice in Hong Kong relating to the expulsion of aliens and asked whether any consideration was being given to withdrawing the United Kingdom’s reservation to article 13 of the Covenant.

168. In his reply, the representative of the State party explained that in all concerned Territories

except Bermuda, the Cayman Islands, the Falkland Islands, Gibraltar and Pitcairn, the law required that an expulsion order be suspended pending an appeal. Where that was not the case, the courts had jurisdiction to order suspension and would usually be expected to do so. In Hong Kong, there were two different procedures relating to expulsions: one related to persons subject to an expulsion order issued by the Director of Immigration; the other, to persons subject to orders of the Governor-in-Council. In the former case, the full rights provided for in the Covenant were available and no one could be removed until the time-limit for an appeal had passed or the persons concerned had declared in writing that he did not intend to appeal. Persons subject to deportation by decision of the Governor-in-Council did not have a right to review nor any right to be present or represented at the meeting where such a decision was taken. It was in relation to the latter procedure that the United Kingdom entered a reservation to article 13 of the Covenant - a reservation whose withdrawal was not currently being considered.

169. Regarding the right of entry of persons into the various dependent Territories or to the United Kingdom, the representative explained that under the nationality provisions adopted in 1981, nationals of the United Kingdom had been divided into various categories, with British subjects who had connections with the United Kingdom metropolitan territory having the right to enter that territory whereas citizens of British dependent Territories did not necessarily have the right of entry to the United Kingdom merely on account of such citizenship.

Right to privacy

170. With reference to that issue, members of the Committee wished to receive necessary additional information on article 17 in accordance with the Committee's general comment No. 16 (32). They also wished to know what kind of personal data could be stored in computers; who was authorized to possess such information; what kinds of personal data were stored in police computers in Hong Kong; and whether there had been any complaints that the special investigative unit established under the Independent Commission Against Corruption Ordinance in Hong Kong had abused its powers.

171. In his reply, the representative of the State party explained that the legal systems of the dependent Territories were founded upon law, under which an individual whose privacy, family, home or correspondence was subjected to arbitrary or unlawful interference from government agencies or private persons could bring a civil claim seeking compensation for any resulting damage or, in certain circumstances, an order restraining the agency or persons from further interference. An individual subjected to unlawful attacks upon his honour or his reputation could also sue for defamation or injurious falsehood. There were also many specific legislative provisions that limited and controlled interference with the rights guaranteed by article 17 and which in some cases made it a criminal offence for a government agency or private person to interfere with rights under that article. Police powers to search persons and property were carefully circumscribed in legislative provisions. As a rule, a police officer could stop and search a person only when he had a reasonable suspicion that that person had committed an offence or was about to do so or was carrying a weapon. Police officers could enter private premises without the permission of the owner or occupant only if they had reason to believe that a person whose arrest was sought had entered such premises, or in execution of a warrant issued by a magistrate. The

Law Reform Commission in Hong Kong had decided to look into the question of privacy and personal data storage. There were mechanisms in Hong Kong to deal with complaints of police misconduct or abuse of power and, if any such complaints substantiated, it could be assumed that disciplinary action would be taken.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

172. With reference to those issues, members of the Committee wished to receive information in respect of laws and regulations pertaining to the recognition of religious sects by public authorities; and on articles 19 and 20 of the Covenant, in accordance with the Committee's general comments Nos. 10 (19) and 11 (19). Members also wished to know what limitations there were in the dependent Territories, if any, on freedom of the press and the mass media and whether there were any regulations in the Territories providing for the publications of government documents of general interest.

173. As regards Hong Kong specifically, members wished to know whether there was any intention on the part of the Government of the United Kingdom to examine the controversial provision in the legislation of Hong Kong relating to the publication of "false news", particularly in so far as it placed on the accused the burden of proving that he had reasonable grounds at the time of publication for believing that the news item in question was true; whether the application in Hong Kong of the definition of blasphemy was consistent with article 19 of the Covenant, not only in respect of freedom of expression but also in respect of the freedom to seek, receive and impart information; whether it was planned to regulate the formation and registration of political parties by law; and whether political leaders would have access to the mass media.

174. In his reply, the representative of the State party said that there were no laws or regulations relating specifically to the recognition of religious sects by public authorities and there were no restrictions on freedom of religion in any of the Territories except as provided for in article 18, paragraph 3, of the Covenant. In some Territories, religious organizations had chosen to be incorporated by act or ordinance. There were no restrictions on the right to freedom of expression other than those provided by law in the various Territories and covering defamation, obscene publications, official secrets, blasphemy, sedition, contempt of court and certain public order offences such as incitement to commit a criminal offence, or offensive conduct conducive to a breach of the peace. When ratifying the Covenant, the United Kingdom had reserved its right, with respect to article 20 of the Covenant, not to introduce further legislation in the dependent Territories. Under existing legislation, propaganda for war or advocacy of national, racial or religious hatred might constitute an offence of sedition or other public order offences such as offensive conduct likely to lead to a breach of the peace or incitement to commit a criminal offence.

175. There were no limitations on freedom of the press and the mass media except in the areas provided for under article 19, paragraph 3, of the Covenant. As in the United Kingdom itself, there was no legislation in the dependent Territories requiring that government information be made public but there was freedom of access to such information subject to the provisions of the Official

Secrets Act. Active consideration was being given in the United Kingdom to amending section 2 of the Official Secrets Act and any such amendments would apply to all the dependent Territories.

176. Turning to questions relating to Hong Kong, the representative said that the legislation relating to the question of publishing "false news" was intended to be included in the process of review that was currently under way and was expected to be completed by the end of 1988. The definition of blasphemy, which was admittedly more relevant to the United Kingdom than to Hong Kong, would certainly be reviewed before 1997. There had been no prosecutions for blasphemy in Hong Kong for many years. Although political parties did not exist in Hong Kong there was no prohibition on them. Whether such parties would eventually emerge was up to the people and the elected members of the legislature. Individual members campaigning for election had full access to the media and had made extensive use of that freedom.

Freedom of assembly and association

177. With reference to that issue, members of the Committee wished to receive additional information regarding restrictions on freedom of assembly and in respect of the regulation of trade unions. Several members wondered whether any consideration was being given to adopting measures designed to ensure that the broad discretionary powers of the Commissioner of Police of Hong Kong were exercised in conformity with article 21 of the Covenant. Members also wished to know whether any applications for registration by trade unions had been rejected and, if so, on what grounds and whether such adverse decisions could be appealed.

178. In his reply, the representative of the State party noted that freedom of assembly and association was expressly protected in the Constitutions of Bermuda, the Falkland Islands, Gibraltar and the Turks and Caicos Islands, and that in most Territories there were essentially no restrictions on those rights. In Hong Kong, however, which was probably the most crowded place in the world, the Public Order Ordinance provided for the control of public meetings so as to ensure that the right of freedom of expression through rallies, meetings and processions could be exercised safely and in conformity with public order. The Ordinance vested authority in the Commissioner of Police for authorizing public meetings of more than 30 persons or public processions of more than 20 persons on a public highway or in a public park and he could prohibit such gatherings or processions in certain limited circumstances. Any such decision could be appealed in writing to the Governor, who might confirm, reverse or modify it. There were no plans to review the powers given to the Commissioner of Police under the Public Order Ordinance.

179. The laws of the dependent Territories permitted the establishment of trade unions but required that they be registered. There were few restrictions on the activities of trade unions except for such areas as the prohibition of intimidation in Gibraltar, for example. In Hong Kong, provisions of the Trade Unions Ordinance regulated such aspects as the constitutions and rules of trade unions, the control of funds and the use of funds for political purposes. In that Territory, the registrar could refuse to grant registration in such cases as when the union failed to follow established procedures, if any of its purposes were unlawful, if its name was the same as that of

another union or where the applicant's registration had previously been cancelled. Such refusal could be appealed to the Supreme Court.

Protection of family and children

180. With reference to that issue, members of the Committee wished to receive information regarding the equality of spouses in the dependent Territories as to marriage, during marriage and at its dissolution; on the extent to which significant differences in the right of illegitimate children as compared to those of legitimate children remained; and on family planning in the dependent Territories, particularly in Saint Helena. One member also requested clarification as to whether the Hong Kong immigration authorities had created obstacles to the reunification of families.

181. In his reply, the representative of the State party said that, except possibly in Saint Helena, there was no inequality in law of spouses as to marriage, during marriage and at its dissolution. The potentially discriminatory provisions regarding dissolution in Saint Helena were currently receiving attention during a review of legislation in that Territory. There were no longer any significant differences in the rights of illegitimate as compared to legitimate children in the Falkland Islands, Pitcairn, Saint Helena and the Turks and Caicos Islands. In the other Territories, illegitimate children were still disadvantaged to a greater or lesser extent in such areas as inheritance, the acquisition of nationality and maintenance support. Advice on family planning was readily available in all the dependent Territories through family planning associations or general practitioners. In Saint Helena, a free and comprehensive family planning service was provided in co-operation with the International Planned Parenthood Federation. Spouses and minor children were generally allowed to join members of their families residing in Hong Kong, but because so many people desired to live there, there was a serious illegal immigration problem. In some cases children had been brought into the Territory illegally and their parents then made application to join them. In other instances, people arrived from China on a one-way permit. An agreement had been concluded between China and Hong Kong to facilitate the orderly movement of people to Hong Kong. It was the policy of Hong Kong authorities to be unsympathetic to requests for family reunification wherever blatant use had been made of illegal tactics involving the deliberate splitting of families.

Right to participate in the conduct of public affairs

182. With reference to that issue, members of the Committee requested clarification of the similarities and differences in the right to political participation of the peoples of the dependent Territories as compared with citizens of the United Kingdom. Regarding Hong Kong specifically, members wished to know what measures were being contemplated to enable the inhabitants of Hong Kong to exercise the rights mentioned in article 25, paragraph (a) and (b), of the Covenant; what proportion of the members of the Legislative Council were directly elected; and whether the United Kingdom might consider withdrawing its reservation to article 25, paragraph (b).

183. In his reply, the representative of the State party stated that, except for Hong Kong, in respect of which the United Kingdom had entered a reservation to article 25, paragraph (b), and Pitcairn, which only had 57 inhabitants, there were no significant differences in the right to political

participation of the peoples living in the dependent Territories as compared with citizens of the United Kingdom. As in the United Kingdom, genuine periodic elections were held for election to legislative bodies on the basis of a secret ballot and universal adult suffrage. The precise qualifications for voting and for standing for office varied but the peoples in the different Territories had free access to public service in the same way as British citizens in the United Kingdom. In Hong Kong, there was definite support for the development of a directly elected element in the legislature but there was deep division as to the timing for such a measure. In order to avoid changes that might prove disruptive and undermine confidence, the United Kingdom had taken a cautious approach to direct elections, but 10 members of the legislature, out of 57, were to be directly elected by 1991 and the number of candidates for direct election would be increased after 1991. If developments before 1997 would allow Hong Kong's legislature to be entirely composed of directly elected representation before 1997, the United Kingdom might consider the question of withdrawing its reservation to article 25, paragraph (b), of the Covenant. Currently, some 41 per cent of the Legislative Council were elected through indirect suffrage by the electoral college and by functional constituencies or interest groups comprised of lawyers, doctors, nurses, chambers of commerce or accountants.

Rights of minorities

184. With reference to that issue, members of the Committee wished to know whether the conditions in the dependent Territories were such as to permit the effective enjoyment of the rights contained in article 27 of the Covenant.

185. In his reply, the representative of the State party declared that conditions in the dependent Territories were, indeed, such as to permit the effective enjoyment by ethnic, religious and linguistic minorities of the rights enunciated in article 27 of the Covenant.

General observations

186. Members of the Committee expressed their appreciation to the United Kingdom's delegation for its clear, frank and informative responses to the Committee's questions. This had led to a constructive and fruitful discussion, which, it was hoped, would make a useful contribution to the observance of human rights in the dependent Territories and particularly to further reflection on the status of Hong Kong.

187. In the latter connection, some members felt that many questions still remained about the compatibility of certain regulations - including some provisions of the draft Basic Law and of the Public Order Ordinance, as far as it concerns discretionary powers of the Commissioner of Police - with the provisions of the Covenant and urged that consideration should be given to solving as many human rights problems as possible, or to enacting the Covenant into law, before 1997. Members also suggested that consideration should be given to disseminating the record of the Committee's discussion of the report to the legislature and public in Hong Kong and requested that the outstanding questions should be answered in a written reply or in the third periodic report.

188. The representative of the State party expressed his delegation's satisfaction with the discussion and thanked the members of the Committee for their courtesy and patience. He hoped that a number of points relating to Hong Kong had been clarified and recalled that any deficiencies in the draft Basic Law would need to be taken up with the Government of China.

189. The Chairman, in concluding the consideration of the second periodic report of the United Kingdom on its dependent Territories, also thanked the members of the delegation for their co-operation with the Committee and for responding to the questions so effectively. He was sure that the Committee's concern would be conveyed to the Government of the United Kingdom.

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351. The Committee considered the third periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/58/Add.6, Add.11 and Add.12) at its 1045th to 1050th meetings, on 1 to 3 April 1991 (see CCPR/C/SR.1045-1050).

352. The report was introduced by the representative of the State party, who noted that a Royal Commission had been appointed on 4 March 1991 to undertake a wide-ranging review, embracing all stages of the criminal justice process in England and Wales, to examine whether there were further ways in which the administration of justice could be improved. Significant measures had also been announced regarding the prison system, and a White Paper was being prepared on that subject. The pace and completeness with which law, practice and capacity in the dependent territories could be aligned with norms codified under the Covenant varied according to their diversity. The aim of the Government was to provide dependent territories with security, political stability and efficient, honest and representative government while taking full account of local customs and views. Moreover, it was the Government's policy to remain ready to respond positively when independence was the clearly and constitutionally expressed wish of the people.

353. Exceptional measures to help counter the threat of terrorism were still needed, and among them was the power to detain suspects for up to seven days under the prevention of Terrorism (Temporary Provisions) Act. In that latter respect, the Government had decided in December 1988 to avail itself of the right of derogation laid down in article 4 of the Covenant and in article 15 of the European Convention on Human Rights.

354. The Sino-British Joint Declaration of 1984, under which Hong Kong would revert to the People's Republic of China on 1 July 1997, made specific provision for the Covenant to remain in force after that date. The Basic Law for the future Hong Kong Special Administrative Region, which had just been promulgated, reproduced that provision in its article 39. Furthermore, a Bill of Rights, which, when enacted, would make justiciable the rights and freedoms contained in the Covenant, had been introduced into Hong Kong's legislature. It was also the intention of the Government to seek an amendment to the Letters Patent to ensure that no future legislature could enact any law inconsistent with the Covenant.

Constitutional and legal framework within which the Covenant is implemented

355. With regard to that issue, members of the Committee wished to know whether the United Kingdom intended to review its reservations to the Covenant and to withdraw some or all of them; whether any consideration had been given to ratifying the Optional Protocol to the Covenant; and whether any consideration was being given to incorporating the Covenant into the domestic law of the United Kingdom and the dependent territories, particularly in view of the fact that common law rules did not always accord exactly with the corresponding provisions of the Covenant and that United Kingdom legislation was sometimes not generally applicable throughout the realm. In that latter regard, it was also inquired whether any consideration was being given to the adoption of a bill of rights in view of the number of judgements delivered by the European Court of Human

Rights in cases concerning the United Kingdom and what kind of difficulties were expected to arise in the process of unifying the British legal system. Clarification was also requested of the apparent contradiction in the Cayman Islands legislation that, on the one hand, required legislation in contravention with the Covenant to be revoked but seemed to allow for the adoption of new laws that might be in violation of its provisions; of the position of the Government during the Gulf conflict; and of the legal reasoning behind the reservation to article 1 of the Covenant on the grounds that the United Kingdom's obligations under article 1,2 and 73 of the Charter of the United Nations took precedence over the Covenant.

356. Referring to the specific situation in Hong Kong, members of the Committee inquired whether the Hong Kong Bill of Rights had Supremacy over other laws; whether, in the view of the Government, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, especially its article 39 and 158, corresponded to the Sino-British Joint Declaration of 1984; whether the Basic Law corresponded to the United Kingdom's intention to secure the application of the Covenant in the future Administrative Region; whether the Government planned to discuss possible inconsistencies between the Basic Law and the Covenant with the Government of the People's Republic of China before the Joint Declaration would be fully implemented; what sanctions would apply if one of the parties to the Joint Declaration failed to respect the agreement after 1997; what arrangements had been contemplated for ensuring that reporting obligations relating to Hong Kong would be met after 1997; and what had been the experience to date with the operations of Hong Kong's Commissioner for Administrative Complaints. In addition, members wished to know whether the Bill of Rights, once adopted, would be enshrined in the Constitution; whether the proposed one-year freeze scheduled to follow the adoption of the Bill of Rights could be extended; whether consideration had been given to making use of article 151 of the Basic Law to enable Hong Kong to become a party to the Covenant directly; whether courts of the Hong Kong Special Administrative Region would be entitled to interpret the Basic Law after 1997; what the composition, status and functions were of the Law Reform Commission; what was the meaning of the term "as applied to Hong Kong", used in article 39 of the Basic Law; and the extent to which the United Kingdom's obligations towards Hong Kong were affected by its reservations concerning article 25 of the Covenant.

357. In his reply, the representative of the State party said that careful consideration had been given to the issues involved in incorporating the Covenant into domestic law and that the Government would review its policy in the light of the Committee's views. While incorporation of the Covenant would not be incompatible with United Kingdom law, it would represent a major change in the country's constitutional arrangements. Since such a highly complex exercise would involve an essentially political decision, based on a close examination of the ways in which existing United Kingdom law fulfilled the country's obligations under the Covenant, it was unlikely that any decision would be taken in the immediate future. Differences in the law as it applied in various parts of the United Kingdom reflected long-standing traditions to which people in the regions attached great importance and there was no need to move towards a completely unified system when the different approaches were equally compatible with the United Kingdom's international obligations.

358. The Government considered that obligations undertaken under the European Convention on

Human Rights were not regarded as a conclusive argument for not ratifying the Optional Protocol and that the Covenant differed from the European Convention in certain substantive respects. It had, however, no current plans to become a party to the Optional Protocol to the Covenant. The inhabitants of most of the dependent territories could resort to the same regional procedures for the protection of human rights as were available to the inhabitants of the United Kingdom. The only Territories in which the Covenant, but not the European Convention, applied were Pitcairn and Hong Kong. In regard to the latter, the Government was concentrating on implementation of the Joint Declaration and the Bill of Rights. Procedures under sections 39 (2) and 41 of the Constitution of the Cayman Islands were applied very rarely, since the greatest care was taken to ensure that bills were compatible with treaty obligations.

359. Following Iraq's invasion of Kuwait, the United Kingdom's forces had been deployed alongside those of other members of the international coalition in response to an appeal made by countries of the region for assistance in the defence of their territory. Such assistance had been rendered in accordance with the Charter of the United Nations, and the Government rejected most firmly any suggestion that the use of force by the coalition had been excessive.

360. Reservations to various provisions of the Covenant were kept under constant review and, with the exception of the reservation in respect of article 25 concerning the Isle of Man, would all be retained. The Government's declaration in connection with article 1 of the Covenant did not constitute a reservation and had been made at a time when the right of self-determination was less clearly defined than was now the case. It merely stated that in the event of a conflict between the United Kingdom's obligations under article 1 of the Covenant and those of the Charter, the latter would prevail. If a decision was taken to remove a particular reservation in respect of Hong Kong the United Kingdom Government would have to consider the implications for the Joint Declaration and the need to ensure the continuity of the relevant obligations after 1997.

361. Referring to other questions relating to Hong Kong, the representative explained that the Basic Law was on the whole consistent with the basic principles enshrined in the Joint Declaration and corresponded with the Government's intention to secure the continued application of the Covenant beyond 1997. Furthermore, both the Joint Declaration and article 39 of the Basic Law provided that the Covenant would remain in force after 1997. The precise modalities regarding reporting obligations would be discussed in due course, and any breaches of the Joint Declaration would be regarded as a very serious matter. Under articles 19 and 158 of the Basic Law, which gave effect to corresponding provisions of the Joint Declaration, it would be for the Hong Kong courts to interpret the Basic Law for all matters in respect of which Hong Kong would have autonomy. There was no danger that the phrase "as applied to Hong Kong", contained in article 39 of the Basic Law, would result in an imperfect implementation of the Covenant in Hong Kong. To the contrary, every effort would be made to remedy any inconsistencies between the application of the Covenant in law and its implementation in practice.

362. The Hong Kong Bill of Rights had been framed so as to embody the provisions of both the Covenant and the Joint Declaration in one instrument that would survive the 1997 transition. The status of the Bill of Rights, once adopted, would be similar to that of any other ordinance in Hong Kong, which meant that it could be amended and repealed. Article 3 (2) and 4 of the Bill of Rights

gave the Covenant supremacy over other Hong Kong laws. They provided that all pre-existing legislation that did not admit of a construction consistent with the Bill of Rights was, to the extent of the inconsistency, repealed and that all legislation enacted subsequently should be construed as being subject to the Bill of Rights. The Bill of Rights could not be in contradiction with the Basic Law, which provided that legislation could be adopted by a simple majority.

363. The Law Reform Committee was composed of 15 members. Its work was delegated to subcommittees dealing with special issues thought to represent legal problems. The purpose of the one-year “freeze” which could be renewed for an additional year on existing legislation, was to prevent lacunae from arising should an existing law be struck down by the new Bill of Rights, especially in the area of law enforcement. A number of groups had, however, voiced opposition to the freeze and the Government would make public its response to those representations in the very near future. It was also planned to amend the Letters Patent, which were the source of legislative power in Hong Kong and which would fall away on 1 July 1997, to prohibit the enactment of any law that restricted rights and freedom in a manner inconsistent with the Covenant and to entrench the Covenant. The Office of the Commissioner for Administrative Complaints had been operating effectively since 1 March 1989 and had already received 372 complaints. Departments against which complaints had been made had acted to remedy procedural defects or correct errors highlighted by the investigation of the complaint. The Commissioner had, however, concluded in his second annual report that the current referral system was fairly narrow and did in fact discourage complaints; consequently, the Government intended to review the system in 1992.

Self-determination

364. With reference to that issue, members of the Committee wished to receive information on the prospects for a definitive resolution of the situation in Northern Ireland and asked whether there were any plans to consult the inhabitants of Hong Kong about their attitude towards their envisaged status after 1997. In addition, it was inquired whether the people of Hong Kong had been invited to express their wishes concerning their own future at the time of the Joint Declaration; what the composition of the legislature would be after 1997; and whether the weight of functional constituencies in the legislature did not constitute a potential for discrimination. Information was also requested regarding the specific situation of the part of the territory of Hong Kong which was not subject to the lease that expired in 1977 and about the Government’s efforts to resolve its dispute with Argentina regarding Falkland Islands (Malvinas).

365. In his reply, the representative of the State party noted that terrorism in Northern Ireland was a continuing problem and that the Government was still attempting to counter it. The Anglo-Irish Agreement of 1986 was a binding treaty which stipulated that the status of Northern Ireland was to be determined by the democratic choice of the people of Northern Ireland. After 14 months of preliminary exchanges between the Secretary of State, the Irish Government and the four main constitutional parties in Northern Ireland, the Secretary of State had, on 26 March 1991, announced the establishment of a basis for formal political talks. It had, nevertheless, been recognized that the announcement marked only the beginning of a very long and difficult process.

366. Responding to other questions, he said that the people of the Falkland Islands expressed their

views in regular elections and that there was no doubt that their wish was to remain under British sovereignty. Since the 1990 agreement between the United Kingdom and Argentina, the two Governments had been able to agree on a number of issues relating to activities in the Islands and in the South Atlantic region in general.

367. Turning to the question of the exercise of the right to self-determination by the people of Hong Kong, the representative highlighted the unique situation of the Territory, which was subject to a lease that would expire in 1997. Following the signing of the Joint Declaration in 1984, an Assessment Office had been established to evaluate the views of the people of Hong Kong, who were found to be largely in favour of the text. The Basic Law Drafting Committee consisted of 59 members, 23 of whom were from Hong Kong, and a Basic Law Consultative Committee, consisting exclusively of Hong Kong representatives, had been set up to determine public opinion in the Territory with regard to the draft Basic Law. The Hong Kong Government had issued a statement to the effect that it welcomed the intensive consultations which China had conducted with the people of Hong Kong during the drafting process and that efforts had been made to take account of the concerns expressed by Hong Kong during the consultation process.

368. Under the treaty of Nanking of 1842 and the Convention of Peking of 1860, Hong Kong Islands and a part of the Kowloon Peninsula had been leased to the British Government in perpetuity. The rest of the territory (the New Territories), comprising 92 per cent of the total land area, had been leased to Britain for 99 years. The Chinese Government had consistently taken the view that the whole of Hong Kong was Chinese territory and that the treaties relating to Hong Kong were unequal. It was clear that the remaining 8 per cent of Hong Kong's land area would not be viable without the New Territories which contained most of the territory's agriculture and industry, its power stations, its airport and container port. Hong Kong Island, the Kowloon Peninsula and the New Territories had therefore to be taken as a whole in the negotiations between the United Kingdom and the People's Republic of China on the future of Hong Kong.

369. In response to questions about the composition of the legislature in 1996, he said that while democracy in Hong Kong had been encouraged, it seemed unlikely, in view of recent history, that it would come about quickly. The establishment of functional constituencies in Hong Kong had been the first step taken towards the progressive development of representative government at the central level in Hong Kong. They partly replaced the Governor's appointment of representatives of major professional, social and economic groups. On the day the Basic Law was promulgated, the National People's Congress of the People's Republic of China had issued a decision on the future composition of the Hong Kong Special Administrative Region. There would be a 60-member legislature, 20 to be directly elected, 30 to be elected through the functional constituencies and 10 to be returned by the electoral committees. According to article 68 of the Basic Law, the ultimate aim was the election of all the members of the Legislative Council by universal suffrage.

State of emergency

370. In connection with that issue, members of the Committee wished to receive information concerning the Government's current views on the problem of extended detention. In addition, it

was asked how legislation applicable in Northern Ireland, especially the provisions of the Northern Ireland (Emergency Provisions) Act of 1978 relating to the application of conditional release and the admissibility of evidence, could be reconciled with articles 10 (3) and 14 (3) (g) of the Covenant. Clarification was also requested of the Parliament's specific powers in its regular reviewing of emergency legislation; of the safeguards against abuse of the seven-day period of detention; and of the Government's intentions in respect of the judgement of the European Court on Human Rights in the case of Brogan and others. Members wished to know whether provisions under the Immigration Act, 1971, which made it possible to dispense with protections that the law would normally provide to suspects and to detain people indefinitely without trial, was compatible with article 9 of the Covenant and whether the Government intended to enter, in that regard, an express derogation under article 4 of the Covenant; whether Hong Kong emergency regulations, especially those referred to in article 18 (4) of the Basic Law; were compatible with article 4 of the Covenant; what was the meaning of the terms "turmoil" and "national unity or security", used in article 18 (4) of the Basic Law; and whether the Basic Law authorized derogations of rights in situations that were less serious than those envisaged in the Covenant.

371. In his reply, the representative of the State party said that one of the features of terrorist activities was the extreme difficulty in obtaining evidence, not least because of the fear which terrorist activities engendered in people who might otherwise be willing to help. Furthermore, time was needed to collect, examine and analyse evidence and information which might result in the establishment of a criminal case. For that reason, the power to arrest a person suspected of terrorist activities and to detain the suspect for a maximum period of seven days was not in any sense arbitrary. Although the possibility of incorporating some form of judicial procedure into such arrangements had been seriously examined, it had been concluded that many difficulties would be involved because of the danger that disclosure would create for the source of the information. There were safeguards, however, to protect those who had been arrested and were being questioned under the powers to arrest persons suspected of terrorist activities. The European Court on Human Rights had found that there had been a violation of article 5, paragraph 3, and article 5, paragraph 5, of the European Convention on Human Rights, but it had made clear its understanding of the difficult situation the United Kingdom faced in Northern Ireland and had not held that the legislation under consideration was either unnecessary or undesirable.

372. The Government's powers to deport under the Immigration Act applied only to a specific category of persons, and the persons to whom it was applied had the right of appeal, with the exception of those whose deportations were ordered specifically on grounds of national security. Moreover, detention could only occur in cases where grounds for deportation existed and did not involve denial of access to the courts. In the cases involving several Iraqis and Palestinians, deportation action had been taken in connection with a very specific threat and the dangers flowing from it.

373. Clause 5 of the draft Hong Kong Bill of Rights reproduced article 4 of the Covenant. Furthermore, in order to resolve any inconsistency between the Covenant and any Hong Kong regulations, a comprehensive review of all ordinances in force would be carried out with the aim of ensuring strict respect for the Bill of Rights. Under article 18 (4) of the Basic Law, relevant national laws might be applied only during a State of war and when turmoil endangered national

unity or security. There was no inconsistency between that provision and article 4 of the Covenant.

Non-discrimination and equality of the sexes

374. In connection with that issue, members of the Committee wished to know whether any further consideration was being given to reviewing the remaining discriminatory provisions under the Immigration Rules, particularly those discriminating between male and female students from abroad and wives and husbands of deportees; whether members of ethnic minority groups facing criminal charges were informed systematically of the relative advantages or drawbacks of opting for a trial before a jury or pleading guilty; whether the planned legislation to ensure the equal treatment of males and females in matters of succession had been enacted; whether steps were being taken to eliminate alleged discrimination against women in some sectors of public employment, such as the police, and to ensure equality of opportunity in both the public and private sectors; and whether progressive measures in favour of women would also be introduced in Hong Kong. It was also inquired why prisoners had no right to vote in the United Kingdom; why assistance from the Commission for Racial Equality was provided in fewer than 20 per cent of cases of alleged discrimination; what role the Standing Advisory Commission on Human Rights played in relation to laws adopted after the enactment of the Northern Ireland Constitution Act of 1973; and whether the Convention on the Elimination of All Forms of Discrimination against Women, which the United Kingdom had just ratified, would apply to Hong Kong, in particular with respect to equal pay for equal work, family property and inheritance questions. Members also sought clarification of the statement in the report that the prison system in England and Wales needed a clearly stated policy on race issues, and further information was requested about the Government's intention to reduce religious discrimination in Northern Ireland by enacting a Fair Employment (Northern Ireland) Act and establishing a Fair Employment Tribunal. In that regard, it was asked why the establishment of a special tribunal had been felt necessary; whether job applicants were required to state their religious affiliations; whether there was an optimal ratio of Protestants, Catholics and others in various job categories; and what the functions were of the Fair Employment Commission.

375. In his reply, the representative of the State party said that the provisions of the immigration laws prescribing different treatment on the basis of gender were very few in number and very limited in scope. The Government was, however, faced with a difficult choice between doing away with gender discrimination in a manner that would bring hardship to categories of people who had previously not been discriminated against and weakening its control over immigration. The policy on race issues was implemented in England and Wales because the greatest incidence of racial discrimination occurred there. The policy related to the operational services such as police and prisons, and was a broad statement of principle on non-discrimination in the delivery of services. Codes of conduct outlawing discrimination existed for a number of professions, including the legal profession and probationary officers.

376. The Standing Advisory Committee on Human Rights, established by the Northern Ireland Constitution Act, had responsibility for advising the Secretary of State on the adequacy of legislation for the prevention of discrimination on the grounds of religious beliefs and political opinion. Under the Fair Employment (Northern Ireland) Act, 1989, the Fair Employment

Commission was empowered to decide on individual cases of alleged discrimination, advise prospective complaints, and award damages for financial loss, loss of opportunity and injury to feelings. The Fair Employment Tribunal could order employers to comply with the instructions of the Commission within a certain time-frame, subject to certain penalties. Legislation to ensure the equal treatment of males and females in matters of succession had not yet been enacted and was still under review by a Committee of the States of Jersey. The Equal Opportunities Commission was responsible for reviewing and, as necessary, proposing changes in equal opportunity legislation. It also provided assistance to victims of alleged sex discrimination and, in certain cases, provided full legal support before the industrial tribunals or the high courts. The Government's policy on the voting rights of prisoners was aimed at maintaining good order and discipline in the prisons.

377. The elaboration of the Bill of Rights had heightened awareness in Hong Kong of human rights issues, including women's rights. As a consequence, a study was being conducted on the social, legal and economic obligations under the Convention on the Elimination of All Forms of Discrimination against Women and its potential impact in Hong Kong. With regard to equality of the sexes, there was no specific programme for the advancement of women in the civil service, but in reality equality prevailed.

Right to life

378. With regard to that issue, members of the Committee wished to know under which circumstances and what rules the military forces could take over police functions and whether they could resort to the use of lethal weapons more freely than the police. Information was also requested on the Report of Review by H.M. Chief Inspector of Prisons of Suicide and Self-Harm in Prison Service Establishments in England and Wales of December of 1990 and on the measures undertaken based on its findings. In addition, clarification was requested of the rules and regulations governing the use of firearms by the police and security forces in Northern Ireland and of the inquest procedure in cases of killings by members of the security forces. In that regard, it was asked how many deaths had occurred as a result of the use of force by the police; in how many such cases had the victims been unarmed; whether any inquiries had been initiated; and whether disciplinary proceedings had been conducted against those found guilty. It was also inquired what steps had been taken to prevent suicide among persons detained under immigration powers; how many death sentences had been imposed in Hong Kong in the past decade; and whether the Government was considering abolishing the death penalty in the dependent territories, particularly in Hong Kong, in view of the transfer of sovereignty in 1997.

379. In his reply, the representative of the State party said that, when summoned to support the civil authorities, members of the armed forces were present purely to assist as needed and did not themselves possess police powers. Only that degree of force which was reasonable in the circumstances was permissible. Detailed instructions were provided on the use of firearms, indicating that they were to be used as a last resort where there was a threat to life and, where practicable, after due warning had been given. Members of the armed forces and the police could be prosecuted if they used firearms unlawfully. Ten individual incidents in which deaths had been caused by members of the security forces had occurred in Northern Ireland in 1990, compared to four and six in 1989 and 1988, respectively. Each incident had been fully investigated and the

evidence obtained had been weighted by an independent official. That procedure had resulted in the institution of criminal proceedings against some members of the security forces. The question of suicide and self-harm in prisons was taken very seriously by the Government, which was seeking to reduce the incidence of those phenomena to a minimum. With respect to detention under immigration powers, only a small proportion of the approximately 20,000 persons who were refused entry into the country each year were detained. Steps had been taken to prevent suicide occurring in such facilities. Whenever possible, people were granted temporary admission instead of being detained. Conditions in special detention facilities were kept as congenial as possible and such facilities were thoroughly inspected. A board of visitors had been established to hear complaints.

380. The Government had become concerned about the discrepancy between its practice and that of the dependent territories in the Caribbean with respect to the death penalty. Although public opinion in the Caribbean Territories tended to favour retention of the death penalty, it had been announced on 28 March 1991 that an Order in Council would be moved to substitute life imprisonment for the death penalty in murder cases in the Cayman Islands, the British Virgin Islands, the Turks and Caicos Islands, Montserrat and Anguilla. The last death sentence in Hong Kong had been carried out in November 1966, and since then the death sentences of 243 persons had been commuted to life imprisonment or specific prison sentences. However, most people in Hong Kong wished to retain the death penalty as a deterrent to serious crime. Furthermore, according to the Joint Declaration, the laws currently in force in Hong Kong would remain basically unchanged after 1997 and, therefore, the death penalty would not become applicable to a broader range of crimes unless the Hong Kong Administration so decided.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment

381. In connection with that issue, members of the Committee wished to know whether there had been any allegations that criminal convictions had been handed down on the basis of confessions obtained under duress and what the possible remedies would be in such cases; whether regulations had been adopted to abolish corporal punishment in all schools; and what measures had been taken to give effect to the right of everyone not to be subjected to medical or scientific experiment without his free consent. Clarification was also requested of the reservation made by the United Kingdom, on ratifying the Covenant, relating to the right to apply to persons lawfully detained in penal establishments of any kind such laws and procedures as it might deem necessary for the preservation of discipline; of provisions relating to the admissibility of confessions in Northern Ireland; and of the apparent discrepancy between article 3 of the Hong Kong Bill of Rights, which was identical to article 7 of the Covenant, and article 28 of the Basic Law.

382. In his reply, the representative of the State party said that while allegations of serious ill-treatment aimed at obtaining confessions had occasionally been made, they had been very rare in recent years. If the allegation was made in the course of a criminal trial, the matter was decided during the trial itself and, if upheld, such statements were not admitted as evidence. The Police and Criminal (Northern Ireland) Order contained extensive provisions relating to ordinary criminal offences and ensured that statements obtained under duress were not admissible and allowed the judge to rule on admissibility if there was any suggestion that evidence had been unfairly obtained.

A wide-ranging programme of measures to prevent ill-treatment of suspects had been introduced in recent years, mostly under the Police and Criminal Evidence Act.

383. Responding to other questions, the representative explained that medical treatment without the consent of the patient was considered to be an assault under the law. Although corporal punishment had been abolished for all publicly funded schools and publicly funded pupils in independent schools, it remained legal for privately funded pupils at independent schools. Such a distinction was justified because the Government did not want to criminalize every form of chastisement of children. Excessive punishment of a child would be covered by the ordinary law on offences against the person.

Liberty and security of the person

384. With reference to that issue, members of the Committee requested clarification of the apparent discrepancy between the indication in the report that a detainee had to be brought before a magistrate's court and charged within 96 hours of his arrest and the statement that detention periods were subject to the sanction of the court after 36 hours. They inquired whether legislation similar to the Police and Criminal Evidence Act, 1984, had come into operation in Northern Ireland; whether *ex gratia* payments to persons who had been detained in custody resulted from an enforceable right to compensation, in the sense of article 9, paragraph 5, of the Covenant; and whether suspects systematically underwent a medical examination or could themselves request such examinations. Further information was also requested about the practice regarding periods recommended by the Home Secretary that life prisoners should serve; and on the provision in the Prevention of Terrorism (Temporary Provisions) Act of 1989 relating to the duty of the police officer reviewing the detention to consider the need to withhold the right of the detained person to have someone informed of his arrest and to see a solicitor.

385. In his reply, the representative of the State party said that the maximum period for which a person could be detained without charge in connection with a serious arrestable offence without charge was 36 hours and could be extended to 96 hours by a magistrate's court. There was no provision in United Kingdom law for an enforceable right to compensation in respect of arrest or detention that was lawful under domestic law but was inconsistent with article 9 of the Covenant. Any request of medical examination by suspects had to be acted on as soon as practicable, except in Northern Ireland terrorist cases, where the custody officer had some discretionary authority.

386. Sections 14 and 15 of the Northern Ireland (Emergency Provisions) Act 1987 gave detained persons the right to have access to legal advice and to have someone informed of their arrest. While the special circumstances of a particular case might dictate a temporary delay, both the maximum length of the delay and the circumstances in which the delay could be authorized were closely controlled. Such delay was justified in circumstances in which the provision of the information to the person whom the accused or suspected terrorist had asked to be informed might, in particular, lead to interference in the collection of information about terrorist acts, or make it more difficult to prevent an act of terrorism or to secure the apprehension of a person suspected of having committed an act of terrorism.

Treatment of prisoners and other detainees

387. With regard to that issue, members of the Committee wished to know whether the planned review of prison rules and standing orders in Northern Ireland had been completed and, if so, whether any of the changes adopted in the rest of the United Kingdom had been incorporated in such rules; whether offenders in Northern Ireland other than those accused of terrorist-type offences were eligible for parole and, if not, why they were denied benefits that were available in other parts of the United Kingdom; and whether there had been any studies regarding the extent to which the prison system guaranteed the realization of the aim of reformation and social rehabilitation, stipulated in article 10, paragraph 3, of the Covenant. In addition, further information was requested on the practice of secure accommodations; on the kind of behaviour that caused a child to be sent to such an accommodation and what role the parents had in the decision to commit a child to such an accommodation; on the number of children in secure accommodations and the relative proportions of convicted youngsters and others in the various security units; on the functions and activities of the Parole Board; and on proposals for further legislation, if any, regarding resort to community-based measures in lieu of prison terms for young adult offenders as well as for improving the operation of the parole system.

388. In his reply, the representative of the State party said that the review of prison rules and standing orders in Northern Ireland was currently in progress and would be the subject of a statutory order. The Criminal Justice Bill currently before Parliament contained a major programme of reform and provided a new framework for sentencing in England and Wales based on the seriousness of the offence. Longer sentences were envisaged for violent and sexual crimes and greater scope was given to the possibility of punishment in the community through a combination of probation, community service and curfew orders. The Bill also incorporated a major reform of the parole system, providing for supervision in every case after a prisoner was released. It was, however, difficult to operate an effective parole system when a high proportion of offenders had committed terrorist crimes.

389. The criterion for placement of a child in secure accommodation was not the commission of a crime but the need to protect the child from injuring himself or others. The role of parents was strengthened considerably in the Children and Young Persons Act, which provided that parents had to be given their proper place in decision-making about their children at every stage. Efforts were made to ensure that the juvenile could be sent back to non-secure accommodations at the earliest opportunity. In prison establishments, as at 30 June 1990, there were 275 sentenced juveniles and 111 juveniles on remand. Legislative measures had successively reduced those numbers over the years and the juveniles were kept apart from adult offenders as much as possible.

Right to a fair trial

390. With regard to that issue, members of the Committee requested clarification of the statement in the report that in cases involving offences under the common law, there was no time-limit in Scotland within which the trial of the accused had to take place. They also wished to know whether there had been any applications for payment of compensation for a miscarriage of justice under section 133 of the Criminal Justice Act 1988 and, if so, with what results; whether the

Government had reached any conclusions as to the amendments that should be made to the right of silence in England and Wales; whether the recommendations of the War Crimes Inquiry relating to the introduction of war crimes legislation had been implemented; what was the mandate of the Royal Commission of Criminal Justice; whether the decision of a person to remain silent in a judicial proceeding was considered tantamount to an admission of guilt; how the independence of the judiciary was guaranteed; whether the Government was considering any improvements in the regulations governing free legal aid; whether the right guaranteed under article 14 of the Covenant to have one's conviction and sentence reviewed by a higher tribunal was fully guaranteed in the United Kingdom; whether, in connection with a particular case involving a police officer, measures had been taken in Hong Kong to ensure that prosecution was not unreasonably delayed; how, in the light of articles 19 and 81 of the Hong Kong Basic Law, the judicial system in the Hong Kong would be maintained after 1997; and what had led to the error in the Birmingham Six case and why it had not been discovered for six years. Clarification was also sought of the guarantees of equal access to evidence by the police and the defence, in particular in cases brought under terrorism legislation, and of provisions relating to presumption of innocence and the reversal of the burden of initial proof in cases concerning "scheduled" offences.

391. In his reply, the representative of the State party explained that time-limits for the hearing of cases in Scotland did not apply to summary offences because, in the great majority of summary cases, people were likely to be either released on bail or simply awaiting a summons to court. Under section 133 of the Criminal Justice Act, 1988, eight applications for payment of compensation for a miscarriage of justice had been approved by the Secretary of State. Following the report of the War Crimes Inquiry, a bill had been introduced to give the courts of the United Kingdom jurisdiction over the offences of murder or manslaughter committed as war crimes in Germany or German-occupied territory during the Second World War. The House of Commons had completed its second reading of the bill, which was to be debated further in the House of Lords.

392. The mandate of the Royal Commission on Criminal Justice was to examine the effectiveness of the criminal justice system in England and Wales and to consider, in particular, whether changes were needed in the conduct of police investigations and their supervision by senior police officers; the role of the prosecutor in supervising the gathering of evidence; the arrangements for the defence of accused persons; access to legal advice; the courts' duty in considering evidence; the arrangements for considering and investigating allegations of miscarriage of justice; and the possibility of amending the right of silence in England and Wales. Any changes in the criminal justice system in England and Wales were dependent on the outcome of the inquiry of the Royal Commission, which had been asked to complete its report within two years.

393. Replying to other questions, the representative said that the recommendations made some 10 years earlier by the Royal Commission on Criminal Procedure had led to the creation of the Crown Prosecution Service, which now handled all prosecutions in England and Wales. Access to legal aid was, in principle, available immediately after arrest, although in terrorist cases that access might be withheld for 48 hours. The question of the quality of legal aid was, however, a matter for debate, and a review of the question of eligibility with respect to legal aid was in progress. Appeals from the Crown Court might be made on any ground involving a question of law alone, but on any ground involving a question of fact or a mixture of law and fact, leave of the Court of Appeal was required. It was the opinion of the Government that those arrangements were consistent with its

obligations under article 14, paragraph 5, of the Covenant.

394. Regarding the right of silence, there was a requirement that a formal warning be given by the police that anything said might be used as evidence; thus a suspect was clearly notified that he was not obliged to say anything. The provisions of the Police and Criminal Evidence (Northern Ireland) Order neither removed the right to silence nor reversed the burden of proof. The silence of the accused was no evidence in itself but could serve to corroborate other evidence in the case. Section 9 of the Northern Ireland (Emergency Provisions) Act provided that if a person had been charged with a particularly serious offence, such as possession of explosive substances, and the prosecution had proved that both the accused and the particular article were found together at the time of the offence, it was up to the defence to prove that the accused did not have the article in his possession.

395. As a result of the efforts of the Government, cases of police interference with statements had been discovered, brought to light and put back before the courts in order to secure the necessary redress for those concerned. Despite the existence of those very well-publicized and important cases that gave rise to concern, the vast majority of criminal cases were dealt with in an entirely satisfactory manner. Referring to questions raised regarding Hong Kong, the representative said that the Joint Declaration provided for the establishment of a new Court of Final Appeal after 1997 and that the long delay in resolving the case of an auxiliary policeman was unrepresentative of what usually happened in civil cases.

Freedom of movement and expulsion of aliens

396. With reference to that issue, members of the Committee wished to know what the difference between expulsion and exclusion was. Clarification was also requested of the system of “supervised departure”; of the “key people” category permitted to register as British citizens under the British Nationality (Hong Kong) Act; of the situation of Vietnamese refugees in Hong Kong; and the compatibility with article 14, paragraphs 3 (b), (d) and (f), of the Covenant on the screening and detention procedures for such asylum seekers.

397. In his reply, the representative of the State party said that the “exclusion” power was directed towards ensuring that where grounds for suspicion of involvement in terrorist offences existed, the suspected person might be excluded from the country, subject to the provisions concerning citizenship and residence. Under the system of supervised departure, a person who was in the country unlawfully could, at the authorities’ discretion, leave voluntarily as an alternative to being deported. Anyone who left under such system enjoyed the same status as anyone applying to enter the country.

398. Persons who could apply to be registered as British citizens under the British Nationality (Hong Kong) Act would be determined according to a scheme approved by the British Parliament. The question of Vietnamese boat people had posed critical problems for Hong Kong, and the Territory had made a genuine effort to deal fairly with them. It had, however, to be noted that articles 13 and 14 of the Covenant related to those lawfully present in the territory of the State party, which was not the case of the boat people in Hong Kong. However, the Territory continued to deal

with the problem in a humane way pending a satisfactory international solution. Criteria for screening and detention procedures had been reviewed with the Office of the United Nations High Commissioner for Refugees and were subject to its scrutiny at all stages of the process. Furthermore, several asylum seekers had had recourse to the courts, had been provided with legal aid and had been successful in pursuing their claims.

Right to privacy

399. In connection with that issue, members of the Committee wished to receive information on the effectiveness to date of the measures that had been introduced under the Data Protection Act, 1984, to safeguard the privacy of data subjects and wished to know whether the Act was applicable to all dependent territories. In addition, information was requested on the mandate of the security forces under the Security Services Act and concerning the law and practice relating to permissible interference with the right to privacy in Hong Kong. In the latter regard, it was asked what the legal regime was governing lawful interference with telephone and telegraphic communications in Hong Kong and whether such practice were monitored by independent bodies.

400. In his reply, the representative of the State party said that the Data Protection Act, 1984, had been generally successful in accomplishing its purpose. Although the Act did not apply in the dependent territories, information there was protected by rules of confidentiality, and any breach of that confidentiality would be dealt with appropriately. The Security Services Act represented the first statutory text covering the secret service and contained new safeguards and specified remedies. Complaints by organizations that were the target of investigations could be reviewed by a commissioner appointed under the Prevention of Terrorism (Temporary Provisions) Act. Interference with telephone communications in Hong Kong could be authorized under the Telecommunications Ordinance in the public interest and on the specific approval of the Governor if there was a risk to security.

Freedom of religion; prohibition or propaganda for war and incitement to national, racial or religious hatred and freedom of association

401. With reference to that issue, members of the Committee wished to know whether there had been any evolution in the Government's position since the submission of the report in respect of the desirability of legislation relating to blasphemy, blasphemous libel and the right to seek information; whether the 1989 Official Secrets Act encompassed defence of the public good and whether this Act applied also to the dependent territories; what had been the effects of the Broadcasting Ban of 1988 and what was the outcome of the judicial review referred to in the report; what had been the impact of the 1989 Broadcasting Bill on freedom of expression; what was the role of the new Radio Authority; what was the status of the proposal to replace the Press Council with a Press Complaints Commission and what the latter's competence would be; and whether there were any legal criteria for determining that an organization should be prescribed under section 1 of the Terrorism Act of 1989.

402. In addition, it was inquired whether the Government intended to further amend the Summary Offences Ordinance and the Education Ordinance in the interest of greater freedom of expression;

whether the United Kingdom had specified remedies in order to comply with the recent judgment of the European Court of Human Rights concerning restrictions on the publication of material about trials in progress; what the maximum punishment for membership of a prescribed organization was and whether mere membership in the organization, in the absence of any other illegal activity, was in itself an offence; why the scope of blasphemy laws in the United Kingdom extended only to Christianity; whether the distinction between the Church of England and other churches was objective and reasonable; and what obstacles existed to a total separation of Church and State. Clarification was also sought of the provisions of the Cable and Broadcasting Act 1984, under which the independence of radio and television could be restricted in the interest of maintaining political impartiality and, with respect to Hong Kong, of provisions of the Noise Control Ordinance and the Public Order Ordinance, which seemed to legitimize restrictions on the right to peaceful assembly as set forth in article 21 of the Covenant; of the nature of the controls applied when public gatherings exceeded 200 persons; and of article 23 of the Basic Law of the Hong Kong Special Administrative Region, which stated that laws would be enacted to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

403. In his reply, the representative of the State party explained that although the Government was aware that the current legal situation with regard to blasphemy was unsatisfactory, it did not believe that the necessary consensus existed to change it. Furthermore, the fact that the law did not apply to all religions did not contravene article 18 of the Covenant. The Official Secrets Act did not make provision for a “public good” defence but was concerned with matters involving “serious harm to the interest of the country”. It had not yet been extended to the dependent territories. The Government believed that the Broadcasting Ban had been highly effective and that the deregulation of broadcasting under the 1989 Broadcasting Bill would lead to greater freedom of expression. The intent of the Cable and Broadcasting Act was to establish independent radio and television commissions and to guard against fomenting terrorism through publicity. The role of the new Radio Authority was to license and regulate broadcasting, and the Press Complaints Commission had been established by the press itself in response to widespread complaints about the press. A case concerning restrictions on press coverage of court proceedings was before the European Court of Human Rights. Such restrictions were carefully designed to strike a balance between freedom of expression and the proper administration of justice.

404. Decisions to proscribe organizations were subject to full parliamentary controls. Under the Prevention of Terrorism (Temporary Provisions) Act, 1989, the maximum penalty for membership in a proscribed organization was imprisonment not exceeding 10 years, and mere membership in such organization was considered an offence. However, in cases where a person had been a member of an organization before it had been proscribed, and where that person had not taken an active role in the organization after its proscription, there was a defence to the offence of membership. Very few organizations had been proscribed under the legislation and those that were, were proscribed because of their involvement in terrorism. There were no plans to introduce changes in the privileges enjoyed by the Church of England, which, in the view of the Government, were reasonable.

405. With regard to prohibitions of public meetings in Hong Kong, meetings involving more than

the numbers of people specified in the Public Order Ordinance required the permission of the Commissioner of Police, such permission having been withheld on six occasions in 1989 and 1990.

Right to participate in the conduct of public affairs

406. With regard to that issue, members of the Committee wished to receive information on the Government's plans, if any, for affirmative action to promote greater opportunities for the employment of members of ethnic minorities and women in the judiciary, Parliament and local Government and the higher grades of the civil service. They also wished to know what the legal basis was for the "positive vetting" of certain candidates for the civil service; how the condition of susceptibility to pressure from certain organizations or groups had been interpreted in practice; whether there was a remedy for the unsuccessful candidate; and whether consideration had been given to changing the simple majority procedure in the British electoral system. Clarification was also sought of restrictions to electoral campaign expenditures under British election law and of the apparent contradiction between prohibiting members of political parties from holding civil service posts while allowing members of the civil service to enter politics.

407. In his reply, the representative of the State party explained that the Employment Act of 1989 had made it possible for employers to offer training to members of particular ethnic groups, and that positive action had also been taken within the civil service in favour of women and members of ethnic minorities. The Bar Council had recently taken positive action to help barristers belonging to ethnic minorities to develop the requisite experience. Anyone who felt unfairly treated under the revised procedures for "vetting" of certain candidates for the civil service could bring the matter to an independent tribunal or the permanent head of the department concerned. Although under the electoral system currently used in the United Kingdom the number of members of Parliament did not directly reflect the number of votes cast, it was considered that a system of proportional representation could give minority parties a disproportionate influence in Parliament. Civil servants were free to enter local governments and national politics.

Rights of persons belonging to minorities

408. With reference to that issue, members of the Committee wished to receive a list of groups and their approximate membership of ethnic minorities who, according to the report, "regarded themselves as such".

409 In his reply, the representative of the State party referred to detailed figures on ethnic minorities provided in the report (CCPR/C/58/Add.12).

Concluding observations

410. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the third periodic report of the United Kingdom of Great Britain and Northern Ireland and for having engaged in a fruitful and constructive dialogue with the Committee. It was clear that progress had been made in the area of safeguarding human rights

since the submission of the second periodic report. Positive developments in the United Kingdom in such areas as criminal justice, prison conditions and family law reform had, for instance, been reported, and the review of matters relating to evidence and jurisdiction by the Royal Commission was particularly welcomed.

411. At the same time, it was noted that some of the concerns expressed by members of the Committee had not been fully allayed. With respect to Northern Ireland, concern was expressed over the excessive powers enjoyed by police under anti-terrorism laws; about the liberal rules regarding the use of firearms by the police; and about the many emergency measures and their prolonged application. In that regard, it was noted that some of the procedures followed with respect to the application of conditional release and the admissibility of evidence should have been the subject of an express derogation under article 4 of the Covenant. Other areas of concern included provisions relating to legal aid, which seemed excessively restricted; asylum seekers and discrimination in the application of immigration laws; the right of appeal under article 14 of the Covenant, which was not sufficiently guaranteed under the United Kingdom's criminal justice system; the legislation on blasphemy; restrictions on freedom of information under the Broadcasting Act; and the exercise of censorship through court injunctions that prevented the publication or broadcasting of information. The hope was also expressed that the Government would review its reservations with respect to the Covenant and give renewed consideration to accession to the Optional Protocol and the enactment of a bill of rights.

412. With regard to the specific situation of Hong Kong, it was emphasized that the legal system should be in a position to guarantee full respect for human rights by 1997. It was noted in that connection that the Joint Declaration and the Basic Law represented important steps towards addressing human rights issues in Hong Kong. However, the Hong Kong Bill of Rights was not yet law, the Letters Patents had not yet been amended and the Law Reform Commission was still considering laws regarding privacy, illegitimacy, police powers and other matters. Measures also had to be taken to coordinate and harmonize the contents of articles 25 to 37 of the Basic Law, article 39 of the Basic Law, which provided for the applicability of the Covenant, and the Hong Kong Bill of Rights. The necessity of continued implementation of the reporting mechanisms provided for in the Covenant after 1997 was also reiterated.

413. The representative of the State party thanked the members of the Committee for the dialogue they had established with the delegation and assured them that his Government placed great importance on the consideration of its reports by the Committee and would be duly notified of the Committee's concerns and comments. He drew the Committee's attention to the fact that the Basic Law of the Hong Kong Special Administrative Region had been drawn up by the People's Republic of China, and that the delegation therefore had not been in a position to give authoritative interpretations of individual provisions of that text.

414. In concluding the consideration of the third periodic report of the United Kingdom of Great Britain and Northern Ireland, the Chairman also expressed satisfaction at the outcome of the dialogue with the State party's representatives. The Committee's observations on the situation in the United Kingdom and its dependent territories had focussed on Northern Ireland and Hong Kong. In that respect, he welcomed the United Kingdom's recent decision to conduct negotiations

in order to reach a solution in Northern Ireland that would provide full protection for human rights. The United Kingdom also had a responsibility to hand over the territory of Hong Kong to China under conditions that would prevent any erosion of the current standard of protection for human rights. Furthermore, it was clear that China had entered into international legal obligations in respect of Hong Kong and that the Joint Declaration and the Basic Law encompassed the implementation of all the provisions of the Covenant, including those which were of a procedural nature.

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408. The Committee considered the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/95/Add.3) at its 1432nd, 1433rd and 1434th meetings, on 21 July 1995, and adopted 19/ the following final comments: 20/

1. Introduction

409. The Committee expresses its appreciation to the State party for its detailed and exhaustive report, which largely complies with the Committee's guidelines, although regret is expressed concerning the failure to address adequately issues properly arising under article 26 of the Covenant. The high level competence of the delegation that presented the report is to be acknowledged, as is their willingness to offer thorough and helpful answers to the wide range of questions put by members. The Committee particularly appreciates the frank acknowledgement by the delegation of those legal issues regarding which the Government of the United Kingdom is still in disagreement with views of the Committee and for their willingness to engage in dialogue with regard to those issues. In this context, the delegation indicated that it would present written observations setting out the view of the Government on the Committee's general comment No. 24(52) on issues relating to reservations made upon ratification or accession to the Covenant or to the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant. 21/ It is the view of the Committee that the exchange of views with the State party has been particularly fruitful and constructive.

410. The detailed information submitted by a wide range of non-governmental organizations has not only greatly assisted the Committee but is also a tribute to the democratic nature of United Kingdom society. These organizations play an essential role in furthering the protection of human rights in the country.

2. Factors and difficulties affecting the implementation of the Covenant

411. With regard to all parts of the United Kingdom other than Northern Ireland, the Committee finds that there are no significant factors or other difficulties that should prevent the effective implementation of the Covenant by the Government. With regard to Northern Ireland, the Committee notes that, despite the recent cease-fire and political negotiations, the lack of a final political solution and the continuation of emergency legislation present difficulties affecting full implementation of the Covenant.

19/ At its 1442nd meeting (fifty-fourth session), on 27 July 1995.

20/ In accordance with the Committee's practice, the expert from the State party, Mrs. Higgins did not take part in the preparation of the comments.

21/ The written observations setting out the view of the Government on the Committee's general comment No. 24 (52) were submitted to the Chairman of the Committee on 21 July 1995.

3. Positive aspects

412. The Committee warmly welcomes and encourages the initiation of the peace process in Northern Ireland. It acknowledges the historic significance of the recent initiatives and of their importance for the promotion and protection of human rights, including the right of self-determination.

413. While the Committee does not agree with some of the positions of the State party concerning the implementation of the Covenant, it acknowledges the vibrant climate of debate in the United Kingdom, which ensures that issues of human rights are comprehensively discussed and in which it is clear that all points of view are seriously considered.

414. The Committee acknowledges the efforts of the State party to combat racial and ethnic discrimination. The programmes to promote the position of racial and ethnic minorities in society are welcomed, including relevant changes to the entry examination system for the police force, proposed similar changes for the prison service, the activities of the Commission for Racial Equality, and the attention paid to race and ethnic sensitivity training in the training programmes for the judiciary.

415. Improvements in the prison system are welcomed. The Committee welcomes the improvements in prison sanitation conditions and the steps taken in addressing problems of overcrowding within prisons. The Government is to be commended for introducing a system whereby participation by prisoners in programmes of education is remunerated in the same way as engagement in prison labour. The statement by the delegation that accommodation of prisoners in cells at police stations has ceased from June 1995 is also to be welcomed. The appointment of a Prisons Ombudsman by the Government in April 1994 is highly appreciated.

4. Principal subjects of concern

416. The Committee notes that the legal system of the United Kingdom does not fully ensure that an effective remedy is provided for all violations of the rights contained in the Covenant. The Committee is concerned by the extent to which implementation of the Covenant is impeded by the combined effects of the non-incorporation of the Covenant into domestic law, the failure to accede to the first Optional Protocol and the absence of a constitutional bill of rights.

417. The Committee also regrets the decision of the State party not to withdraw any of its reservations under the Covenant.

418. It is the view of the Committee that the powers under the provisions permitting infringements of civil liberties, such as of extended periods of detention without charge or access to legal advisers, entry into private property without judicial warrant, imposition of exclusion orders within the United Kingdom, etc., are excessive. Note is taken of the Government's own admission that conditions at the Castlereagh detention centre in Northern Ireland are unacceptable and concern is therefore expressed at the Government's admission that it has not decided definitively to close the

facility. The Committee is also disturbed by reports of the continuation of the practice of strip searching male and female prisoners in the context of the low security risk that now exists and in view of the existence of adequate alternative search techniques.

419. Despite the recent improvements in prison conditions in the United Kingdom, the Committee is still disturbed by the high number of suicides of prisoners, especially among juveniles.

420. The Committee is concerned that, notwithstanding the establishment in the United Kingdom of mechanisms for the external supervision of investigations of incidents in which the police or military are allegedly involved, especially incidents that result in the death or wounding of persons, as the investigations are still carried out by the police, they lack sufficient credibility.

421. The Committee notes with concern that members of some ethnic minorities, including Africans and Afro-Caribbeans, are often disproportionately subjected to stop and search practices that may raise doubts under the non-discriminatory provisions of the Covenant, particularly its articles 3 and 26.

422. The treatment of illegal immigrants, asylum-seekers and those ordered to be deported gives cause for concern. The Committee observes that the incarceration of persons ordered to be deported and particularly the length of their detention may not be necessary in every case and it is gravely concerned at incidences of the use of excessive force in the execution of deportation orders. The Committee also notes with concern that adequate legal representation is not available for asylum-seekers effectively to challenge administrative decisions.

423. The Committee is concerned that the practice of the State party in contracting out to the private commercial sector core State activities which involve the use of force and the detention of persons weakens the protection of rights under the Covenant. The Committee stresses that the State party remains responsible in all circumstances for adherence to all articles of the Covenant.

424. The Committee notes with concern that the provisions of the Criminal Justice and Public Order Act of 1994, which extended the legislation originally applicable in Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violates various provisions in article 14 of the Covenant, despite the range of safeguards built into the legislation and the rules enacted thereunder.

425. The Committee is concerned at the levels of support offered for the protection of cultural and ethnic diversity within the United Kingdom. The Committee further notes with concern that many persons belonging to minorities frequently feel that acts of racial harassment are not pursued by the competent authorities with sufficient rigor and efficiency. The Committee also regrets the lack of success in the adequate recruitment of ethnic minorities into the police. It further believes that much remains to be done to effect changes in public attitudes and to combat and overcome racism.

426. The Committee regrets that corporal punishment may still be permitted in certain circumstances in independent schools.

5. Suggestions and recommendations

427. The Committee strongly recommends that the State party take urgent steps to ensure that its legal machinery allows for the full implementation of the Covenant. Accordingly, it is urged to examine the need to incorporate the Covenant into domestic law or introduce a bill of rights under which legislative or executive encroachment on Covenant rights could be reviewed by the courts. It should also reconsider its current position as to accession to the first Optional Protocol.

428. The State party is recommended to review the reservations which it has made to the Covenant.

429. In the context of the elaboration of a peace settlement for Northern Ireland, the Committee recommends that further concrete steps be taken so as to permit the early withdrawal of the derogation made pursuant to article 4 and to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency. It also recommends that specific efforts be made to enhance in Northern Ireland confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for the independent investigation of complaints. The Committee further recommends that the Castlereagh detention centre be closed as a matter of urgency.

430. Given the significant decline in terrorist violence in the United Kingdom since the cease-fire came into effect in Northern Ireland and the peace process was initiated, the Committee urges the Government to keep under the closest review whether a situation of "public emergency" within the terms of article 4, paragraph 1, of the Covenant still exists and whether it would be appropriate for the United Kingdom to withdraw the notice of derogation that it issued on 17 May 1976, in accordance with article 4 of the Covenant.

431. The State party should ensure that all those who are involved in the detention of prisoners be made fully aware of the international obligations on the State party concerning the treatment of detainees, including the United Nations Standard Minimum Rules for the Treatment of Prisoners.

432. The Committee recommends that the Criminal Justice and Public Order Act of 1994 and the equivalent legislation in Northern Ireland be reviewed in order to ensure that the provisions which allow inferences to be drawn from the silence of accused persons do not compromise the implementation of various provisions in article 14 of the Covenant.

433. The State party is urged to take further action to tackle the remaining problems of racial and ethnic discrimination and of social exclusion. A concerted campaign is called for, to address issues of research, juvenile and adult education, recruitment policies for the public and private sectors, legislative initiative and law enforcement. Similarly forceful action is needed to ensure that women play an equal role in society and that they enjoy the full protection of the law. Law enforcement officers, the judiciary and the legal profession should receive information and

education to ensure that laws that protect women from violence are fully enforced and that the interpretation of laws, such as those relating to the doctrine of provocation, does not unfairly discriminate against women. All public officials should be made fully cognizant of the programmes of action and receive guidance to ensure that their actions always serve to support and promote the stated aims.

434. The Committee recommends that corporal punishment administered to privately funded pupils in independent schools be abolished.

435. The Committee recommends that the State party give wide publicity to the Covenant, to its report and the reporting procedure. It recommends that these comments and information about the dialogue with the Committee be distributed to interested non-governmental groups and the public at large.

CCPR A/51/40 (1996)

47. At its 1451st to 1453rd meetings (fifty-fifth session), on 19 and 20 October 1995, the Human Rights Committee considered the part of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/95/Add.5 and HRI/CORE/1/Add.62) and at its 1469th meeting, on 1 November 1995, adopted the following observations.

1. Introduction

48. The Committee welcomes the presence of a high-level delegation, which included several officials of the Hong Kong Government. It expresses its appreciation to the representatives of the State party for the high quality of the report, the abundance of additional information and the detailed and frank answers provided in response to the oral and written questions posed and comments made by the Committee during its consideration of the report. The Committee notes with satisfaction that that information enabled it to engage in a highly constructive dialogue with the State party.

49. The detailed information submitted by a wide range of non-governmental organizations has greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

2. Factors relating to reporting obligations under the Covenant

50. The Committee notes that the United Kingdom and China agreed in the Joint Declaration and Exchange of Memoranda of 19 December 1984 that the provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. In that connection, the Committee, at its 1453rd meeting, on 20 October 1995, made clear its view on future reporting obligations in relation to Hong Kong in a statement read out by the Chairman (see para. 72) that, as the reporting obligations under article 40 of the Covenant will continue to apply, the Committee will be competent to receive and consider reports that must be submitted in relation to Hong Kong.

3. Positive aspects

51. The Committee welcomes the initiatives taken by the Government with a view to ensuring the full implementation of the Covenant in Hong Kong, in future as well as at present. In that regard, the Sino-British Joint Declaration on the question of Hong Kong appears to provide a sound legal basis for the continued protection of the rights as specified in the Covenant. The Committee welcomes the enactment of the Bill of Rights Ordinance in June 1991.

52. The Committee takes note with appreciation of the various ordinances that have been reviewed with regard to their conformity with the Bill of Rights and amended accordingly, and also appreciates the continuing process of reviewing and updating relevant legislative provisions in that regard.

53. The Committee welcomes efforts being made by the authorities to disseminate information on

human rights to members of the judiciary, civil servants, teachers and the public in general, including school-age children.

54. The Committee further welcomes the recent enactment of the Sexual Discrimination Ordinance and the Disability Discrimination Ordinance, the aims of which include the elimination of discrimination against women and disabled persons. It welcomes the oral information provided by the authorities that an equal opportunities commission will be established in the first quarter of 1996 with power to recommend draft laws and draft amendments to those Ordinances.

55. The Committee welcomes the enactment of the Torture Ordinance, which gives domestic effect to part of article 7 of the Covenant.

4. Principal subjects of concern

56. The Committee notes that section 7 of the Bill of Rights Ordinance provides that "the Ordinance binds only the Government and all public authorities; and any person acting on behalf of the Government or a public authority". The Committee emphasizes in this regard that under the Covenant a State party has an obligation to protect individuals against violations not only by government officials but also by private parties. It thus notes with deep concern the absence of legislation providing effective protection against violations of Covenant rights by non-governmental actors.

57. The Committee expresses concern over the investigative procedure in respect of alleged human rights violations by the police. It notes that the investigation of such complaints rests within the Police Force itself rather than being carried out in a manner that ensures its independence and credibility. In light of the high proportion of complaints against police officers which are found by the investigating police to be unsubstantiated, the Committee expresses concern about the credibility of the investigation process and takes the view that investigation into complaints of abuse of authority by members of the Police Force must be, and must appear to be, fair and independent and must therefore be entrusted to an independent mechanism. The Committee welcomes the changes made to strengthen the status and authority of the Independent Police Complaints Council but notes that those changes still leave investigations entirely in the hands of the police.

58. The Committee notes with concern that, while the majority of the population is Chinese-speaking, official charge forms and charge sheets as well as court documents are issued in English only, although efforts are being made to make Chinese versions available.

59. The Committee expresses concern over the situation of women in Hong Kong, particularly the high level of violence and the absence of adequate punitive or remedial measures. It regrets that the Sexual Discrimination Ordinance is not yet in force and that it limits the damages awarded to women who are subject to sexual discrimination and does not give power to direct the reinstatement of women who have lost their jobs because of sexual discrimination. The Committee is also concerned that the Sexual Discrimination Ordinance has significant exemptions and that it is limited in its application to discrimination based on gender and marriage and does not prohibit discrimination on grounds of age, family responsibility or sexual preference.

60. The Committee notes with concern that there are as yet no detailed regulations to cover emergencies and that under the Court of Final Appeal Ordinance, the jurisdiction of the Court will not extend to reviewing undefined "acts of state" by the executive. The Committee is concerned that vague terminology such as "acts of state" may be interpreted so as to impose undue restrictions on the jurisdiction of the Court, including the application of any emergency laws that may be enacted in the future.

61. The Committee also regrets that there is as yet no detailed legislation to cover public emergencies and that the provision in article 18 of the Basic Law on that subject does not appear to correspond to the provisions of article 4 of the Covenant.

62. The Committee expresses concern that the administration of legal aid in Hong Kong is refused in a large number of Bill of Rights cases that are directed against the Government or public officers.

63. While noting with satisfaction the efforts by the Government, in cooperation with the United Nations High Commissioner for Refugees, to care for the needs of the Vietnamese asylum seekers, the Committee expresses concern that many Vietnamese asylum seekers are subject to long-term detention and that many are held under deplorable living conditions that raise serious questions under articles 9 and 10 of the Covenant. It is particularly alarmed about the situation of children living in camps who are deprived of the enjoyment of rights under the Covenant in practice, given their parents' status as illegal immigrants. The Committee also expresses concern at the conditions under which deportations and removals of non-refugees of Vietnamese origin were carried out.

64. With respect to article 17 of the Covenant, the Committee takes note of the Law Reform Commission's review of the Telecommunication Ordinance and the Post Office Ordinance. It notes with concern that those ordinances can be abused to intrude on the privacy of individuals and that their amendment is urgently needed.

65. The Committee is aware of the reservation made by the United Kingdom that article 25 of the Covenant does not require establishment of an elected executive or legislative council. However, it takes the view that once an elected legislative council is established, its election must conform to article 25. The Committee considers that the electoral system in Hong Kong does not meet the requirements of article 25, or of articles 2, 3 and 26 of the Covenant. It underscores in particular the fact that only 20 of 60 seats in the Legislative Council are subject to direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. That clearly constitutes a violation of article 2, paragraph 1 and articles 25 (b) and 26. The Committee is also concerned that laws depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction of the rights protected by article 25.

5. Suggestions and recommendations

66. The Committee recommends that increased efforts be made to introduce, as soon as possible,

Chinese versions of official charge forms and charge sheets and of court documents.

67. The Committee recommends that the State party adopt the proposal of the Independent Police Complaints Council to incorporate non-police members in the investigation of all complaints against the police.

68. The Committee recommends that the State party reconsider its decision on the establishment and competence of a human rights commission.

69. The Committee recommends that the deficiencies in the Sexual Discrimination Ordinance be overcome by appropriate amendments and that comprehensive anti-discrimination legislation aimed at eliminating all remaining discrimination prohibited under the Covenant be adopted.

70. The Committee urges the Government to take immediate steps to ensure that living conditions in Vietnamese refugee detention centres be improved. Special attention should be devoted to the situation of children, whose rights under the Covenant should be protected. The refugee status of all detainees should be speedily determined, with the right of judicial review and legal aid. Deportation and removal of non-refugees of Vietnamese origin should be closely monitored to prevent abuse.

71. The Committee recommends that immediate steps be taken to ensure that the electoral system conforms with articles 21, 22 and 25 of the Covenant.

6. Request for a report

72. The Committee requests the Government of the United Kingdom to submit a brief report, by 31 May 1996, on new developments with regard to the enjoyment of human rights in Hong Kong, pursuant to the recommendations contained in the present observations and in the statement below by the Chairman, for consideration by the Committee at its fifty-eighth session.

Statement made by the Chairman on 20 October 1995 on behalf of the Human Rights Committee relating to the consideration of the part of the fourth periodic report of the United Kingdom relating to Hong Kong

The Human Rights Committee - dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights - has taken the view that human rights treaties devolve with territory and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, that protection cannot be denied to them by virtue of the mere dismemberment of the territory or its coming within the jurisdiction of another State or of more than one State. 6/

However, the existence and contents of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong make it unnecessary for the Committee to rely solely on the

foregoing jurisprudence as far as Hong Kong is concerned. In this regard, the Committee points out

6/ See CCPR/C/SR.1178/Add.1 and CCPR/C/SR.1200-1202.

that the parties to the Joint Declaration have agreed that all provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. Those provisions include reporting procedures under article 40. As the reporting requirements under article 40 of the Covenant will continue to apply, the Human Rights Committee considers that it is competent to receive and review reports that must be submitted in relation to Hong Kong.

Accordingly, the Committee is ready to give effect to the intention of the parties to the Joint Declaration as far as Hong Kong is concerned and to cooperate fully with the parties to the Joint Declaration to work out the necessary modalities to achieve those objectives.

CCPR A/52/40 (1997)

78. At its 1535th and 1536th meetings (fifty-eighth session), held on 23 October 1996, the Human Rights Committee considered a report submitted by the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/117) in compliance with a special decision of the Committee (CCPR/C/79/Add.57). The Committee subsequently adopted, at its 1556th meeting, on 6 November 1996, the following observations.

1.

79. The Committee welcomes the presence of a high-level delegation which included a significant number of officials of the Hong Kong Government. It expresses its appreciation to the representatives of the State party for the high quality of the report and the detailed and frank answers provided by the delegation in response to the written and oral questions. The Committee notes with satisfaction that that information enabled it to engage in a highly constructive dialogue with the State party.

80. The Committee also welcomes the presence of a significant number of non-governmental organizations from Hong Kong. The information provided by those organizations greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

2.

81. At its 1453rd meeting, on 20 October 1995, the Committee 1/ envisaged issues in connection with reporting obligations on the part of Hong Kong after the transfer of sovereignty to the People's Republic of China on 1 July 1997. It recalled that, in dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights, it had taken the view that human rights treaties devolve with territory and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory enjoy the protection of the rights under the International Covenant on Civil and Political Rights, such protection cannot be denied to them merely by virtue of dismemberment of that territory or its coming under the sovereignty of another State or of more than one State.2/

82. The Committee reiterates that the existence and contents of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China make it unnecessary for the Committee to rely solely on the foregoing

1/ Statement by the Chairman on behalf of the Human Rights Committee (CCPR/C/79/Add.57), read out by the Chairman at the Committee's 1453rd meeting on 20 October 1995.

2/ See CCPR/C/SR.1178/Add.1 and CCPR/C/SR.1200-1202.

jurisprudence as far as Hong Kong is concerned. In that regard, the Committee pointed out that the parties to the Joint Declaration have agreed that all provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. Those provisions include reporting procedures under article 40. Since the reporting requirements under article 40 will thus continue to apply, the Human Rights Committee expects that it will continue to receive and review reports submitted in relation to Hong Kong.

83. Accordingly, the Committee is ready to give effect to the intention of the parties to the Joint Declaration as far as Hong Kong is concerned and to cooperate fully with the parties to the Joint Declaration to work out the necessary modalities to achieve those objectives.

3. Suggestions and recommendations

84. The Committee urges the United Kingdom of Great Britain and Northern Ireland (Hong Kong) Government to take all necessary steps to ensure effective and continued application of the provisions of the Covenant in the territory of Hong Kong in accordance with the Joint Declaration and the Basic Law.

85. The Committee reminds the United Kingdom of Great Britain and Northern Ireland Government of its continuing responsibility to ensure to the people of Hong Kong the rights protected by the Covenant and to carry out its obligations under the Covenant, including, in particular, article 40. In that regard, it requests the Government of the United Kingdom to report on the human rights situation in the territory of Hong Kong up to 30 June 1997.

CCPR A/55/40 (2000)

296. The Committee considered the fourth and fifth periodic reports of the United Kingdom of Great Britain and Northern Ireland regarding the Crown Dependencies of Jersey, Guernsey and the Isle of Man (CCPR/C/95/Add.10 and CCPR/C/UKCD/99/5) at its 1818th and 1819th meetings (CCPR/C/SR.1818 and 1819) held on 17 March 2000, and adopted the following concluding observations at its 1827th meeting, held on 23 March 2000.

1. Introduction

297. The Committee welcomes the submission of the State party's fourth and fifth periodic reports concerning these territories and appreciates the opportunity to examine them, but regrets the delay in the submission of the fourth periodic report. The Committee also appreciates the useful core document submitted by the State party and the constructive and open dialogue it had with the State party's delegation.

298. The Committee welcomes the information provided in the reports on developments in domestic legislation relating to the promotion and protection of rights recognized under the Covenant. The Committee observes, however, that while the reports provide details on progress made through new legislation, they contain little information on actual practice. The State party should ensure that all concerns are reported upon, even when those concerns have not yet been addressed.

2. Positive aspects

299. The Committee notes with satisfaction that the domestic courts in several cases have had regard to the Covenant (art. 2).

300. The Committee welcomes the Administrative Decisions (Review) (Amendment) (Jersey) Law 1995 which provides for a system of administrative appeals against decisions of committees, departments and officials of the States of Jersey to an independent review board (arts. 2 and 14).

301. The Committee welcomes the withdrawal on 2 February 1993 of the State party's reservation to subparagraph (c) of article 25 which, inter alia, applied to jury service in the Isle of Man.

302. The Committee welcomes the various steps taken in all territories to combat any discrimination on the basis of sex and race. The Committee notes with appreciation the information provided by the delegation that all distinctions based on sex have been abolished with regard to inheritance of realty in Sark. The Committee also welcomes the steps taken in Jersey to eliminate differences between the rights of children born in wedlock and the rights of those born out of wedlock (arts. 3, 24 and 26).

3. Principal subjects of concern and recommendations

303. The Committee strongly urges the State party to ensure that all Covenant rights are given effect in domestic law (art. 2).

304. The Committee recommends that human rights education be extended to members of the police force, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training. Human rights education should also be incorporated at every level of general education (art. 2).

305. The Committee recommends that the authorities in Guernsey and the Isle of Man give due consideration to establishing independent bodies with a mandate to review administrative decisions (arts. 2 and 14).

306. The Committee notes the information provided by the delegation that corporal punishment is not permitted in schools on the Isle of Man as a matter of policy, and recommends the adoption of legislation to outlaw corporal punishment (arts. 7 and 10).

307. The Committee notes the information provided by the delegation that steps are being taken in the United Kingdom to ensure that its anti-terrorism laws comply with article 9 of the Covenant, and urges Jersey, Guernsey and the Isle of Man to take corresponding measures.

308. The Committee recommends that the authorities in Jersey consider amending relevant legislation to enable a withdrawal of the reservation to article 11 of the Covenant.

309. The Committee recommends that measures be taken to remove and prohibit any discrimination on grounds of sexual orientation (arts. 17 and 26).

310. The Committee notes with concern that the archaic and discriminatory provisions of the Criminal Code which make blasphemy a misdemeanour are still in force on the Isle of Man, and recommends that these be repealed (art. 19).

311. The Committee notes that consideration has been given in Jersey to amending the Separation and Maintenance Orders (Jersey) Law 1953 and recommends that all three jurisdictions introduce legislation and other effective measures to prohibit discrimination between women and men (arts. 3 and 26).

312. With reference to the withdrawal of the State party's reservation to article 25, the Committee urges the authorities to introduce further reforms that secure all their inhabitants full right of participation in the conduct of public affairs.

313. The Committee recommends that the authorities complete the current process of enacting legislation outlawing all racial discrimination. In accordance with article 26, the authorities should also promulgate legislation which prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4. Dissemination of information about the Covenant (art. 2)

314. The Committee requests that the sixth periodic report concerning Jersey, Guernsey and the Isle of Man be submitted together with the sixth report of the United Kingdom of Great Britain and Northern Ireland, at a date to be set after the examination of the pending fifth report. That report should be prepared in accordance with the revised guidelines adopted by the Committee and should give particular attention to the issues raised in the present concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Jersey, Guernsey and the Isle of Man.

(75) United Kingdom of Great Britain and Northern Ireland and Overseas Territories

Part I

(1) The Committee considered the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CCPR/C/UK/99/5) and the fourth and fifth combined report on the Overseas Territories of the United Kingdom (CCPR/C/UKOT/5) at its 1960th to 1963rd meetings, held on 17 and 18 October 2001. The Committee adopted the following concluding observations at its 1976th and 1977th meetings, held on 29 October 2001.

Introduction

(2) The Committee has examined the reports of the United Kingdom of Great Britain and Northern Ireland, and on the Overseas Territories of the United Kingdom. The Committee appreciates the extensive supplementary report covering events since the submission of the initial report and the responses, provided in advance, to the Committee's written questions. The Committee regrets that the State party's supplementary report was submitted at a late stage and was available in one working language only. In particular, the Committee commends the inclusion in the State party's responses of a comprehensive account of the legal and practical actions taken to follow up on each of the Committee's concluding observations on the consideration of the previous report. In respect of the overseas territories, the Committee regrets that it did not receive the entirety of the documentation referred to in the corresponding report, which prevented Committee members from fully examining the report.

Part II

United Kingdom of Great Britain and Northern Ireland

Positive aspects

(3) The Committee welcomes the entry into force of the Human Rights Act 1998. The Committee considers the resulting enhanced judicial scrutiny of executive and legislative action, and the legal duty placed upon the authorities to act consistently with rights which are similar in substance to many Covenant rights, to be an important step towards ensuring compliance with, and remedies for breaches of, those Covenant rights.

(4) The Committee welcomes the conclusion of the Belfast Agreement in April 1998 and the changes adopted in Northern Ireland, based upon the agreement, as the State party and other signatories have sought to move away from the extraordinary measures in place in that jurisdiction towards higher promotion of respect for human rights and fundamental freedoms. In particular, the Committee commends the establishment of an independent Police Ombudsman with jurisdiction over complaints in regard to all uses of force on the part of the police and with significant powers of investigation and enforcement, as well as the creation of a Human Rights Commission in

Northern Ireland. Consonant with these developments, the Committee also welcomes the State party's recent withdrawal of its notice of derogation relating to article 9, paragraph 3, of the Covenant.

(5) The Committee also welcomes the extension of the Race Relations Act to cover all public bodies, and the adoption of a Disability Discrimination Act.

Principal subjects of concern and recommendations

(6) The Committee notes with concern that the State party, in seeking inter alia to give effect to its obligations to combat terrorist activities pursuant to Security Council resolution 1373 (2001), is considering the adoption of legislative measures which may have potentially far-reaching effects on rights guaranteed in the Covenant and which, in the State party's view, may require derogations from human rights obligations.

The State party should ensure that any measures it undertakes in this regard are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant.

(7) The Committee regrets that the State party, while having incorporated many Covenant rights into its domestic legal order through the Human Rights Act 1998, has failed to accord the same level of protection to other Covenant rights, including the provisions of articles 26 and 27.

The State party should consider, as a matter of priority, how persons subject to its jurisdiction may be guaranteed effective and consistent protection of the full range of Covenant rights. It should consider, as a priority, accession to the first Optional Protocol.

(8) The Committee is deeply disturbed that, a considerable time after murders of persons (including human rights defenders) in Northern Ireland have occurred, a significant number of such instances have yet to receive fully independent and comprehensive investigations, and the persons responsible to be prosecuted. This phenomenon is doubly troubling where persistent allegations of involvement and collusion by members of the State party's security forces, including the Force Research Unit, remain unresolved.

The State party should implement, as a matter of particular urgency given the passage of time, the measures required to ensure a full, transparent and credible accounting of the circumstances surrounding violations of the right to life in Northern Ireland in these and other cases.

(9) Although the Committee appreciates the establishment of specialist bodies to deal with various specific areas of discrimination, such as the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission, the Committee considers that the establishment of a national human rights commission with comprehensive jurisdiction to receive complaints of human rights violations would be a valuable addition to the remedies available to persons complaining of such violations, particularly persons for whom recourse to the

courts is, as a practical matter, too costly, difficult or impossible.

The State party should consider the establishment of a national human rights commission to provide and secure effective remedies for alleged violations of all human rights under the Covenant.

(10) The Committee is concerned at the State party's maintenance of an old law that convicted prisoners may not exercise their right to vote. The Committee fails to discern the justification for such a practice in modern times, considering that it amounts to an additional punishment and that it does not contribute towards the prisoner's reformation and social rehabilitation, contrary to article 10, paragraph 3, in conjunction with article 25 of the Covenant.

The State party should reconsider its law depriving convicted prisoners of the right to vote.

(11) Although the Committee appreciates the introduction of new criminal offences of racially aggravated violence, harassment or criminal damage, it is deeply disturbed by the recent repeated violent outbreaks of serious race and ethnicity-based rioting and associated criminal conduct in some major cities. These incidents seriously affected the enjoyment of rights under articles 9 and 26 of many persons of different ethnic groups.

(a) The State party should continue to seek to identify those responsible for these outbreaks of violence, and to take appropriate measures under its law. It should also work to facilitate dialogue between communities and between community leaders, and to identify and remedy the causes of racial tension in order to prevent such incidents in the future.

(b) The State party should also consider facilitating inter-political party arrangements to ensure that racial tension is not inflamed during political campaigns.

(12) The Committee is disturbed at the sharply increased number of racist incidents within the criminal justice system, particularly those reported as having been committed by police and prison staff against inmates. Racist violence between prisoners inappropriately located together has also resulted in serious violations of prisoners' rights under the Covenant, including at least one case of murder.

The State party should encourage the transparent reporting of racist incidents within prisons and ensure that racist incidents are rapidly and effectively investigated. It should ensure that appropriate disciplinary and preventive measures are developed to protect those persons who are particularly vulnerable. To this end, the State party should pay particular attention to improving the representation of ethnic minorities within the police and prison services.

(13) Although the Committee appreciates that a number of improvements over the reporting period in the representation of ethnic minorities in various walks of public life, as well as the extension in the Race Relations (Amendment) Act 2000 of a positive duty to certain public bodies

to promote racial equality, the Committee remains concerned at the disproportionately low levels of participation by members of minority groups in government and the civil service, particularly the police and prison service.

The State party should take appropriate measures to ensure that its public life better reflects the diversity of its population.

(14) The Committee is concerned at reports that, since the recent terrorist attacks, persons have been the subject of attack and harassment on the basis of their religious beliefs and that religion has been utilized to incite to the commission of criminal acts. The Committee is also disturbed that incidents of violence and intimidation on the basis of religious affiliation in Northern Ireland continue to occur.

The State party should extend its criminal legislation to cover offences motivated by religious hatred and should take other steps to ensure that all persons are protected from discrimination on account of their religious beliefs.

(15) The Committee notes that, despite recent improvements, the proportions of women participating in public life, particularly at senior levels of the executive and judiciary and in Parliament, and also in the private sector, remain at low levels.

The State party should take the necessary steps towards achieving an appropriate representation of women in these fields.

(16) The Committee is concerned that asylum-seekers have been detained in various facilities on grounds other than those legitimate under the Covenant, including reasons of administrative convenience. In any event, the Committee considers unacceptable any detention of asylum-seekers in prisons. The Committee notes, moreover, that asylum-seekers, after final refusal of their request, may also be held in detention for an extended period when deportation might be impossible for legal or other considerations. The Committee is also concerned that the practice of dispersing asylum-seekers may have adverse effects on their ability to obtain legal advice and on the quality of that advice. Dispersal, as well as the voucher system of support, have on occasion led to risks for the physical security of asylum-seekers.

The State party should closely examine its system of processing asylum-seekers in order to ensure that each asylum-seeker's rights under the Covenant receive full protection, being limited only to the extent necessary and on the grounds provided for in the Covenant. The State party should end detention of asylum-seekers in prisons.

(17) Although the Committee appreciates the recent prohibition on drawing negative inferences from a suspect's silence while his or her lawyer is absent, the Committee remains troubled by the principle that juries may draw negative inferences from the silence of accused persons.

The State party should reconsider, with a view to repealing it, this aspect of criminal procedure, in order to ensure compliance with the rights guaranteed under article 14 of the Covenant.

(18) The Committee remains concerned that, despite improvements in the security situation in Northern Ireland, some elements of criminal procedure continue to differ between Northern Ireland and the remainder of the State party's jurisdiction. In particular, the Committee is troubled that, under the so-called "Diplock court" system in Northern Ireland, persons charged with certain "scheduled offences" are subject to a different regime of criminal procedure, including the absence of a jury. That modified procedure applies unless the Attorney-General certifies, without having to justify or explain, that the offence is not to be treated as a scheduled offence. The Committee recalls its interpretation of the Covenant as requiring that objective and reasonable grounds be provided by the appropriate prosecution authorities to justify the application of different criminal procedures in particular cases.

The State party should carefully monitor, on an ongoing basis, whether the exigencies of the specific situation in Northern Ireland continue to justify any such distinctions. In particular, it should ensure that, in each case where a person is subjected to the "Diplock" jurisdiction, objective and reasonable grounds are provided and that this requirement is incorporated in the relevant legislation (including the Northern Ireland (Emergency Provisions) Act 1996).

(19) The Committee notes with concern that, under the general Terrorism Act 2000, suspects may be detained for 48 hours without access to a lawyer if the police suspect that such access would lead, for example, to interference with evidence or alerting another suspect. Particularly in circumstances where these powers have not been used in England and Wales for several years, where their compatibility with articles 9 and 14, inter alia, is suspect, and where other less intrusive means for achieving the same ends exist, the Committee considers that the State party has failed to justify these powers.

The State party should review these powers in the light of the Committee's views.

(20) The Committee is concerned that provisions of the Criminal Procedure and Investigations Act 1996 enable prosecutors to seek a non-reviewable decision by a court to the effect that sensitive evidentiary material, which would otherwise be disclosed to a defendant, is withheld on public interest/immunity grounds. The Committee considers that the State party has failed to demonstrate the necessity of these arrangements.

The State party should review these provisions in the light of the Committee's remarks and previous concluding observations in respect of article 14, in order to ensure that the guarantees of article 14 are fully respected.

(21) The Committee is concerned that powers under the Official Secrets Act 1989 have been exercised to frustrate former employees of the Crown from bringing into the public domain issues of genuine public concern, and to prevent journalists from publishing such matters.

The State party should ensure that its powers to protect information genuinely related to matters of national security are narrowly utilized and limited to instances where it has been shown to be necessary to suppress release of the information.

Part III

Overseas Territories of the United Kingdom of Great Britain and Northern Ireland

(22) The Committee welcomes the abolition of the death penalty for all offences in all of the overseas territories; it notes its retention in the Turks and Caicos Islands for piracy and treason.

(23) The Committee is deeply concerned that the protection of Covenant rights in the overseas territories is weaker and more irregular than in the metropolitan area. The Committee regrets that the provisions of the Human Rights Act 1998, which significantly improve the protection of many rights contained in the Covenant, do not extend to the overseas territories (except, to some extent, Pitcairn and St. Helena). The Committee regrets that the Covenant rights are not incorporated in the legislation of the territories, and that its provisions cannot be invoked directly before or applied by the judiciary. The consequences are especially regrettable in those overseas territories (British Virgin Islands, Cayman Islands, St. Helena and Pitcairn) whose Constitutions do not contain chapters on fundamental rights. In this regard, the Committee would welcome answers to the questions not dealt with by the delegation.

The State party should give priority to incorporating Covenant rights in the respective domestic legal orders of the overseas territories.

(24) The Committee is concerned at the absence throughout the overseas territories of appropriate training on the Covenant for public officials, a situation recognized by the State party.

The appropriate authorities should establish programmes of training and education for their public officials, aimed at inculcating a human rights culture in these persons who exercise governmental powers in the various overseas territories.

Positive aspects, principal subjects of concern and recommendations

Bermuda

(25) The Committee welcomes the establishment of the Human Rights Commission of Bermuda, with powers of investigation, prosecution, conciliation and education.

British Virgin Islands

(26) The Committee appreciates the elimination of constitutional rules inconsistent with articles 3 and 26 of the Covenant which discriminated between the rights accorded to spouses of male and female British Virgin Islanders.

Cayman Islands

(27) The Committee appreciates the passage of the Youth Justice Law providing a regime for

juvenile offenders, which focuses on the specific needs of that group.

(28) The Committee is concerned that the categories of persons for whose deportation Cayman law provides, in particular “undesirable” or “destitute” persons, are defined in terms that are vague and unclear, and that deportation of such persons may violate articles 17 and 23 of the Covenant. Moreover, the Committee considers that, since deportation occurs pursuant to an order issued by the Governor after having considered a magistrate’s report, there is insufficient review of the appropriateness of such a measure in terms of article 13.

The State party should review its law on deportation to provide clear criteria, and effective and impartial review of any deportation decision, in order to ensure compliance with articles 17, 23 and 26.

Falkland Islands/Malvinas

(29) The Committee welcomes the enactment of the Race Relations Ordinance 1994 (adopting the provisions of the Race Relations Act 1974 (UK)) and the Sex Discrimination Act 1998, aimed at eliminating discrimination on grounds of race and sex.

(30) The Committee is concerned that, while “seek[ing] to remove any avoidable discrimination against, or stigma attaching to, children born outside of marriage”, the Family Law Reform Ordinance does not abolish the status of illegitimacy. The Committee also considers that the absence of any right of compensation, in the circumstances of article 14, paragraph 6, of the Covenant, violates that provision.

The State party should amend these aspects of its law to bring them into line with its obligations under article 24, taken together with article 26, and under article 14 of the Covenant.

Gibraltar

(31) The Committee appreciates the Domestic Violence and Matrimonial Proceedings Act 1998 and the Maintenance (Amendment) Ordinance 1998, which provide protection orders and exclusion orders for vulnerable parties in matrimonial relationships.

Montserrat

(32) The Committee commends the State party for its emphasis on maintaining observance of its human rights obligations despite the volcanic eruptions of 1995, 1996 and 1997. In particular, the Committee commends the holding of elections for the Legislative Council in October 1996.

(33) The Committee is concerned over the situation of long-term prisoners, who have had to serve sentences in other overseas territories.

The State party should ensure that, consistent with articles 10, 17, 23 and 24 of the

Covenant, long-term prisoners may serve their sentences in its territory; alternatively, it should investigate non-custodial means of punishment.

St. Helena

(34) The Committee takes note of the adoption of Public Order Ordinance 1997, providing an up-to-date legal scheme governing public processions and assemblies. The Committee also appreciates the appointment of a Public Solicitor in 1998, providing free legal advice, assistance or representation to persons so requiring.

(35) The Committee is concerned at the mixing of accused and convicted prisoners, especially since St. Helena is not one of the overseas territories to which a reservation to article 10, paragraph 2 (a), of the Covenant has been applied.

The State party should ensure that accused and convicted prisoners are appropriately segregated.

Turks and Caicos Islands

(36) The Committee takes note of the construction and opening of a new detention facility, with female prisoners wholly segregated from male prisoners and supervised by female staff. It appreciates the sharp drop in infant mortality (from 30 per cent to 13 per cent over two years), following the adoption of a series of primary health measures.

(37) The Committee is concerned that in the Turks and Caicos Islands, alone among the overseas territories, capital punishment for the offences of treason and piracy has been retained. It considers that such retention may raise issues under article 6 of the Covenant, particularly since the death penalty has been abolished for the offence of murder.

The State party should take the necessary steps to abolish the death penalty for treason and piracy.

British Indian Ocean Territory

(38) Although this territory was not included in the State party's report (and the State party apparently considers that, owing to an absence of population, the Covenant does not apply to this territory), the Committee takes note of the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful.

The State party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report.

Part IV

(39) The State party should publicize the text of its fifth periodic reports, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations.

(40) The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the State party's policy and practice contained in paragraphs 6, 8, 11 and 23 above. The Committee requests that information concerning the remainder of its recommendations be included in the State party's sixth periodic reports, to be submitted by 1 November 2006.