

# UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

**CESCR E/1989/22**

(arts. 10-12)

241. The Committee considered the second periodic report of the United Kingdom of Great Britain and Northern Ireland concerning rights covered by articles 10 to 12 of the Covenant (E/1986/4/Add.23) at its 16<sup>th</sup> and 17<sup>th</sup> meetings, on 16 February 1989 (E/C.12/1989/SR.16 and 17).

242. The report was introduced by the representative of the reporting State, who highlighted relevant recent developments in his country. They included the establishment of separate departments which would provide more balanced representation of both health and social security issues at the Cabinet level, the reform of the national social security system embodied in the Social Security Act of 1986, a comprehensive strategy by the United Kingdom Government for the prevention, treatment and control of AIDS, which included services for the treatment and support of people who were HIV-positive or who had AIDS as well as governmental and local measures aiming to promote the prosperity of health and welfare of the people living in the inner cities that had not so far benefited from increasing prosperity to the same extent as the country as a whole.

## General matters

243. Members of the Committee congratulated the United Kingdom Government on its comprehensive report which reflected the changing situation of the United Kingdom in the field of economic, social and cultural rights. They thanked, in particular, the representative of the reporting State who had resolved, in their statements, many of the points on which the Committee had felt concern, especially in respect of the lack of information in the report itself regarding the difficulties encountered by the United Kingdom in implementing the rights affirmed in the Covenant. Members of the Committee felt that the report was more descriptive than analytical and they hoped that future reports would strike a better balance between the two approaches.

244. With reference to the general framework within which the Covenant was implemented, members of the Committee wished to know the extent to which measures had been taken by the Government during the last decade had enabled citizens of the United Kingdom to come closer to the realization of rights covered by articles 10 to 12 of the Covenant or whether those measures made it more difficult to do so.

245. Some information was also requested on whether, in the enjoyment of relevant rights in the report, there were differences between British nationals, persons from dependent territories, persons from Commonwealth countries, and persons who did not belong to any of those groups. It was asked, in particular, whether the rights covered by articles 10 to 12 of the Covenant were justiciable in the United Kingdom, what measures were being taken by the Government to ensure that national wealth was equitably distributed, and whether the Government had given any thought

to implementing specific legislation relating to the Covenant or whether it considered that all the obligations of States parties were adequately covered by legislation which had already been passed independently.

246. The representative replied that his Government had been unable to identify, in the first wide question raised by the Committee, the particular issues on which the Committee would like it to focus. However, there could be no question of not making progress in the United Kingdom towards implementing articles 10 to 12 of the Covenant for every citizen.

247. With regard to the implementation of the Covenant in United Kingdom territory, it was pointed out that the United Kingdom did not make it a practice to give legal effect to the provisions of the international treaties to which it was a party. Instead, it ensured that domestic legislation was in keeping with those treaties and would enable it to fulfil the obligations it had undertaken and, where necessary, it adopted legislation for that purpose.

#### Article 10: Protection of the family, mothers and children

248. Members of the Committee recalled that articles 10, paragraph 3, of the Covenant provided that special measures of protection and assistance should be taken on behalf of children. In this connection, they noted that a recent analysis by the Children's Legal Centre, contained in a book published by the United Kingdom Human Rights Network, concluded that "the United Kingdom failed to live up in significant respects to the promises it had made on children's rights under international treaties". They, therefore, asked whether the Government had any response to the assertions contained in that analysis in so far as they pertained to its obligations under article 10, paragraph 3, of the Covenant. Furthermore, members of the Committee asked whether the Government was aware of any significant number of cases involving the exploitation of child labour in the United Kingdom and, if so, whether details could be provided as to the problems encountered and the solutions proposed; whether there had been any significant problems involving the sexual abuse of children in recent years and, if so, what measures had been taken to provide appropriate special protection. They also wished to know whether or not the Matrimonial Homes Act (1981) had been considered in any detail by the courts of law and, if so, in how many cases and what were the principal issues which had arisen; how successful the strategies used to prevent family breakdown were, whether statistical indications could be provided in that regard, what the rate of divorce was in the United Kingdom and what the percentage was of unfair dismissal cases based on the grounds of pregnancy during the period covered by the report. Further information was requested on the various kinds of penal responsibility applied to delinquent minors and children in accordance with national penal legislation and, in this connection, it was asked in what cases the provisions of the Children and Young Persons Act of 1969 were not applied to persons under 10, 14 and 17 years of age. Information was also requested on cases of recent application of the Children and Young Persons Act of 1969 in relation to the prevention of child abuse. Members of the Committee wished to know, in particular, what steps had been taken by the Government to protect children against hooliganism and juvenile delinquency and to prevent such phenomena, whether statistical information could be provided on the extent of employment of children of 13 years of age why youngsters could be employed up to 48 hours a week, which was more than adults in most other countries.

249. In addition, it was asked to what extent the emigration laws of the United Kingdom facilitated family unity in terms of both persons who were regarded as married under the marriage legislation in force and of common law spouses who wished to join their partners in the United Kingdom, and whether any further thought was being given to the liberalization of the emigration provisions to encourage family unity within the context of the Covenant.

250. It was asked whether in the United Kingdom there was an increasing trend towards juvenile delinquency and whether the courts were responding by imposing more custodial sentences, or whether they were trying to avoid detention as much as possible in view of its harmful effects on the juvenile delinquent; what was the proportion of juvenile delinquency as a percentage of crime as a whole; whether associations for child protection against abuse had been established and what measures the Government was taking to solve the problem. Several questions were raised in order to clarify current concepts of marriage and the family in the United Kingdom, and the application of certain measures for the protection of children and young persons, especially in employment. In addition, detailed information was requested on certain legal provisions concerning divorce, unfair dismissal of pregnant employees, maternity benefits and adoption, the position of illegitimate children with regard to inheritance, social security for foreigners, refugees and nationals, and specific problems relating to retirement pensions of the elderly.

251. In his reply, the representative, referring to some of the issues raised by the Children's Legal Centre in its analysis on the situation of children in the United Kingdom, stated that a proposal in the Children's Bill currently with Parliament was that the use of wardship to place children in the care of local authorities would stop. He stated also that the Access to Personal Files Act 1987 and regulations under that Act were at present before Parliament, and that the legislation, if approved, would come into effect on 1 April 1989. The legislation would enable an individual to know what was recorded about him or her in the manually maintained records held by a local authority in the performance of its social services functions. The local authorities responsible for child protection were given guidance to help judge whether a child (i.e. a person under 18) making a request for access to his or her personal files understood the nature of the request. If so, the child would be entitled to make the request and the authority should reply to the child. As regards the exploitation of child labour in the United Kingdom, he provided information on the number of cases brought to court in recent years and stated that existing legislation provided reasonable and effective safeguards to protect children. The representative added that cases of sexual abuse of children had occurred in his country recently and the Government was much concerned about the problem. In this connection, he provided information on a statutory inquiry established by his Government with regard to sexual abuses concerning a large number of children in Cleveland, on publications and directives to guide medical and social services in their action concerning cases of sexual abuse on children and on statistics concerning sexual abuse on children which had been elaborated by the National Society for the Prevention of Cruelty to Children and the Department of Health. Furthermore, he stated that the Matrimonial Homes Act (1981) was applied in Scotland, but results on the operation of the act were not yet available. He provided, however, information on the Matrimonial Homes Act (1983) as applied to England and Wales. Information on strategies used to prevent family breakdown was not available, but major legislation was under consideration by Parliament which, among other things, was intended to help families stay together. The representative then explained the ways in which the Children's Bill sought to clarify, rationalize

and where possible simplify the law so as to provide a more effective framework for the provision of services to children and their families and for the protection of children at risk. He stated that the rate of divorce in England and Wales in 1986 had been nearly 1.3 per cent of married people. Information on unfair dismissal cases based on the grounds of pregnancy would be circulated subsequently to the Committee. In connection with questions raised about the penal responsibility applied to delinquent minors and children, the representative provided information on young offenders' institutions which had replaced in 1988 the former detention and youth custody centres. The age of criminal responsibility under English law was 10 years. Statistics on the number of children that had been committed to care under the Children and Young Persons Act in England would have been made available to the Committee. As for the protection of children against hooliganism and juvenile delinquency, he referred to information submitted by his Government in August 1988 to the United Nations Crime Prevention and Criminal Justice Branch in Vienna. He further stated that no by-laws permitted children to be employed for up to 48 hours a week.

252. Furthermore, all non-contributing benefits under the social security system were guaranteed for all legal residents in the United Kingdom. However, some benefits were insurance-based and therefore required the payment of contributions. With regard to juvenile delinquency, the representative indicated that the problem was becoming less serious in the United Kingdom. A total of 138,000 minors between the ages of 10 and 18 had been sentenced by the courts or cautioned by the police in 1987, as against 142,000 in 1986 and 175,000 in 1985. The United Kingdom Government's policy was to stress the importance of crime prevention. In connection with the questions on adoption, he referred to the information contained in his country's initial report, 4/ which had been considered in 1981 by the Sessional Working Group of Governmental Experts on the implementation of the Covenant. He emphasized that United Kingdom legislation made no distinction between adoptive and natural parents or between adopted and natural children. He also provided detailed information on the maternity grants available under the social security system, particularly in the case of women who were employed, and on the system in force in the United Kingdom with regard to retirement pensions. He referred in particular to the 1978 Employment Protection (Consolidation) Act, which guaranteed, *inter alia*, the right of women not to be dismissed because of pregnancy. He also explained that there was no legal difference between civil and religious marriages.

#### Article 11: Right to an adequate standard of living

253. It was recalled that on several occasions, the General Assembly had suggested that the Committee should use benchmarks to assist in evaluating programmes made under the Covenant. In this connection, members of the Committee noted that in academic analyses by British experts, it had been suggested that the Supplementary Benefit rate be the equivalent of a minimum level of income below which no individual or family should be allowed to fall if they had no income from full-time employment. They, therefore, asked whether the Government of the United Kingdom accepted this as a useful "benchmark" for analytical purposes, whether it was correct that, according to official estimates, 5 per cent of the population of the United Kingdom (2.4 million people) were living that level, which represented an increase of 16 per cent

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4/ E/1980/16/Add.16 and corr.1, Add.25 and Corr.1 and Add.26

since 1979, and what measures the Government had taken in compliance with article 11 of the Covenant. Furthermore, it was noted that, as a result of recent changes involving the replacement of Supplementary Benefit by Income Support in the United Kingdom, the Social Security Advisory Committee, appointed by the Secretary of State, had estimated that 43 per cent of claimants would be worse off as a result of the changes. In this regard, it was asked whether that assessment was considered accurate by the Government to protect the rights recognized in article 11 of the Covenant. Members of the Committee noted also in the report that the average daily calorie intake for the population of the United Kingdom as a whole was well in excess of the recommended levels and they asked whether the Government could provide an indication as to the number of individuals whose actual intake was known or estimated to fall below the recommended levels. They asked also whether the Government was aware of the existence of any homeless persons in the United Kingdom, whether there were any difficulties encountered in ensuring an adequate standard of living for all segments of the population in the various parts of the United Kingdom and why the average calorie intake during the period from 1970 to 1984 had decreased from 3,367 to 3,217, that is by 4.5 per cent. They also wished to have more information on the measures taken by the Government with respect to assuring proper food quality control and, in particular, adequate consumer representation in food advisory committees.

254. It was also asked whether, generally speaking, it was government policy to make the individual responsible for his own subsistence. Reference was made to information provided by a non-governmental organization, according to which the homeless population of the United Kingdom or the people living in inadequate dwellings exceeded 3 million; it was asked what steps were being taken to alleviate the situation. The same non-governmental organization also reported that a law had recently been passed in the United Kingdom which would allow landlords in the private sector to set rents at any level they wished and that there would no longer be protection of "fair rent" provisions and allocations. In this connection, it was inquired whether that would really be the effect of the legislation referred to and what would happen to those tenants who were currently protected.

255. In reply, the representative stated that no United Kingdom Government had ever accepted that the levels of income-related benefits constituted a poverty line. The setting of those levels involved many factors including, for example, available resources and incentive effects in combination with in-work income and taxation. To take the income support rates, which had now replaced supplementary benefits, as a poverty line would lead to the obvious absurdity that the incidence of poverty could be reduced by the lowering of benefit rates. His Government believed that the most effective way to attack poverty was to pursue a policy of economic growth so that the standard of living was increased at all levels. Furthermore, the representative stated that the Social Services Advisory Committee had made no independent assessment of the effects of the reform of the social security system. It had not calculated or estimated the number of "gainers" or "losers" which had resulted. In any case, there had been no "losers" among those people entitled to income support at the time of the change because benefits were given transitional protection and the income-support system was subject to continuous monitoring. With regard to the questions raised about actual calorie intake, the representative stated that in the United Kingdom, the recommended intake for men was 2,510 calories per day, if they were sedentary as most were, and 2,510 calories for women.

256. A major survey recently completed would show what proportion of the population ate less than their recommended intake, but there was no evidence of any problem along the lines implied by the questions raised.

257. The United Kingdom Government was concerned about the homeless. Its housing policies were designed to help those areas with the greatest needs by extending the role and funding of housing associations, expanding the private rented sector and targeting resources more effectively in the public sector. Over the past year an additional 74 million pounds had been made available to authorities with the most acute problems of homelessness, together with approval of 40 million pounds additional housing association capital receipts to be spent on schemes to help homeless families. The Government also recognized that some areas and population groups were in greater need than others and housing policy was included among the measures being taken to help those who needed help the most. As regards the decrease in the average calorie intake during the period 1970-1984, the representative explained that it had been due to decreased supplies of dairy products, meats, fish, eggs, fats, sugar and cereals, which had been offset to some extent by increases in vegetables, fruit and alcohol supplies. That partly reflected a decreased need for food as the population had become more sedentary, and partly increased efficiency in the distribution of foods.

258. Surveys and studies were being conducted in the United Kingdom on various aspects of the nutrition of children and adults. With regard to housing, the representative noted that housing stock in the United Kingdom had continued to deteriorate over the years, since owners had no incentive to make the necessary repairs because of rent control. A new act, which had entered into force on 13 January 1989, should enable owners to derive greater benefit from their investments.

#### Article 12: Right to physical and mental health

259. Members of the Committee wished to know whether there were any major deficiencies in the National Health Service of the United Kingdom and the policies relating to it, in terms of securing full respect for the rights recognized in article 12, paragraph 1, of the Covenant, and whether recent changes in the National Health Service were intended solely to improve the financial stability of the Service or to enhance realization of the right of access to health care. Furthermore, information was requested on the situation of AIDS in the country. It was also asked what steps had been taken by the Government in order to prevent or diminish the level of the cost of the health-care services for patients, whether health-care facilities were equally available and accessible in rural and urban areas and, if not, what incentives were given to medical doctors to practise in rural areas. Members of the Committee further wished to have specified the quality and scope of health-care facilities provided for rural populations compared with those available to urban populations.

260. With reference to the health care of migrants, it was asked whether in the United Kingdom, the same medical controls were applied to all persons or whether such controls varied according to nationality, quite apart from the special controls normally imposed on persons coming from epidemic areas. It was also asked what the situation was with regard to health care, illegal immigrants and how long it took, under the new arrangements concerning medical services, for

health care actually to be delivered.

261. Further information was requested on how the authorities were addressing the problem of AIDS, bearing in mind the need to reconcile the conflicting priorities of respect for human rights on the one hand and the need to protect society on the other. It was asked, in particular, what steps had been taken to curb the spread of AIDS in prisons and whether it was a fact that homosexuals, irrespective of whether or not they were sero-positive, could not obtain life insurance coverage. It was also asked what measures the Government had taken to improve health, safety and environmental standards at the work place and whether there were in the United Kingdom many cases of cardiovascular diseases as a result of inappropriate diet.

262. In this reply, the representative provided information on a number of initiatives which had been taken in the United Kingdom in 1988 concerning both maternity and child health and, in particular, the question of perinatal, neonatal and infant mortality, antenatal and post-natal care and child health surveillance. As regards recent changes in the National Health Service, he pointed out that there were unacceptable variations in the health service provided in different areas of the country. If the National Health Service, which was available to all members of the population, was made more efficient through proper financial and management accountability, the Government believed that the patient must ultimately benefit through the improvement of the service at the point of delivery and the more effective use of the available funds and scarce skilled manpower. He further explained that the National Health Service remained free at the point of delivery and that the Government was prepared to invest additional resources in specific areas where there was a particular need to develop service. However, the Government considered it reasonable that, to help finance those important developments, those who could afford it should pay for part of the cost of certain medical services. The representative also pointed out that since 1948, the National Health Service had been planned, managed and financed to ensure equality of access for all United Kingdom citizens. Health authorities were well aware of the need to monitor accessibility to services and the needs of rural communities were always taken into account in their services planning.

263. He further stated that it was open to an immigration officer to refuse entry to a person if he constituted a health hazard or if he had arrived for the purpose of taking advantage of the United Kingdom health facilities without the means to pay for them. The Government was not satisfied with the situation relating to the waiting lists for admission to hospitals and a special branch had been established in the Ministry of Health to monitor progress. The representative provided some figures on recorded cases of AIDS and of persons diagnosed as human immunodeficiency virus-positive (HIV-positive), which were constantly increasing. With regard to AIDS sufferers, the authorities laid the stress entirely on voluntary consent to testing and treatment and were opposed to the use of compulsion or any form of unfair discrimination. They also supported international resolutions on education and information as essential weapons in the fight against AIDS. It was true that persons in the high-risk AIDS group found it difficult to obtain life insurance from private insurance companies since they were clearly not good risks and companies wanted to make profits. In prisons, blood tests designed to detect the AIDS virus were made either at a prisoner's request or on the recommendation of the prison doctor, with the prisoner's consent in such a case. The United Kingdom authorities had launched a broad education campaign on

AIDS and teaching materials on AIDS were available to the public in general and to the prison population in particular. Large amounts had been allocated by the Government for research on AIDS and drug addiction.

Concluding observation

264. Following the consideration of the report, the representative of the United Kingdom proposed to provide the Committee with further written information on the many questions to which it had not been possible to reply orally.

265. Some members of the Committee noted that the information contained in the report gave a static and overall view of the situation. There had, however, been many changes in the United Kingdom and in the rest of the world since that country had submitted its initial report in 1980, and what the Committee would have liked to have was a comparative study describing the developments that had taken place during that period, as well as the specific problems that still had to be solved. It was also regretted that, during the consideration of reports, there had been a tendency to answer the Committee's questions only on the basis of information available to delegations of States parties at that particular time. In view of the complexity of the topic, that was a difficult exercise to which states parties would have to devote more time and thought.

266. The Committee therefore looked forward with interest to the further information the representative of the United Kingdom would provide in writing. The additional report should offer realistic answers to the questions raised, inter alia, in connection with the rights of children and their protection, the problem of the homeless, the right to food, the problem of poverty and the redistribution of national wealth.



## **CESCR E/1995/22**

264. The Committee considered, at its eleventh session, the second periodic reports submitted by the United Kingdom of Great Britain and Northern Ireland (Dependent Territories) on articles 10 to 12 (E/1986/4/Add.27 and E/1986/4/Add.28) and on articles 13 to 15 (E/1990/7/Add.16) of the Covenant as well as additional information (E/1989/5/Add.9) submitted pursuant to the consideration of the second periodic report of the United Kingdom concerning rights covered by articles 10 to 12 of the Covenant. The Committee considered those reports at its 33<sup>rd</sup> and 34<sup>th</sup> meetings on 23 November, and paid particular attention to the specific situation of Hong Kong at its 34<sup>th</sup>, 36<sup>th</sup> and 37<sup>th</sup> meetings on 23, 24 and 25 November. After having considered the reports, the Committee, at its 53<sup>rd</sup> meeting on 7 December 1994, adopted the following concluding observations.

### Introduction

265. The Committee notes that the reports submitted by the State party have been prepared in accordance with the Committee's guidelines. It welcomes the presence of a high-level delegation composed of representatives from the United Kingdom of Great Britain and Northern Ireland and from Hong Kong. It notes with satisfaction that the information submitted in the reports and that provided by the delegation in reply to both written and oral questions enabled the Committee to obtain a comprehensive view of the extent of the State party's compliance with its obligations under the Covenant. The Committee also appreciates the submission of written replies to its list of issues. It considers that the content and form of the dialogue established between the delegation and the Committee was, in many respects, highly satisfactory.

266. The Committee was especially appreciative of the constructive manner in which the delegation referred to and responded to the contributions of non-governmental organizations to the Committee's review of the implementation of the Covenant in Hong Kong.

### Part one

#### Implementation of articles 10 to 12 and 13 to 15 of the Covenant in the United Kingdom of Great Britain and Northern Ireland and its Dependent Territories (with the exception of Hong Kong)

##### A. Positive aspects

267. The Committee welcomes the enactment in recent years of a number of laws which aim to promote the safeguarding and enjoyment of the rights guaranteed by the Covenant. It appreciates, in particular, the adoption of the Education Act 1993 and of the Code of Practice on the Identification and Assessment of Special Educational Needs and notes that the latter was issued in May 1994 to identify and assess children with special educational needs and provide for their education whenever possible in mainstream schools. It also welcomes the Local Government and Housing Act 1989 and the Homelessness Code of Guidance for Local Authorities which aim at overcoming certain difficulties in the implementation of the right to housing as specified in article

11 of the Covenant.

268. The Committee takes note with interest of the efforts of the Government to promote self rule in the various Dependent Territories and to enhance public awareness of and ability to exercise economic, social and cultural rights.

B. Factors and difficulties affecting the implementation of the Covenant

269. The State party reported no specific factor or difficulty affecting the implementation of the Covenant. The Committee, however, notes that notwithstanding the absence of such information in the reports it is clear that certain economic and social difficulties continue to be faced by the most vulnerable segments of society, partly as a result of budgetary constraints.

270. The Committee notes that while the small size and therefore limited human and material resources of most of the Dependent Territories might result in certain difficulties, the fact remains that the rights recognized in the Covenant must be fully implemented even if this requires additional efforts and resources from the United Kingdom Government.

C. Main subjects of concern

271. The Committee regrets that it has not been felt possible to include in the reports submitted to the Committee concerns and views expressed by the public and non-governmental organizations, including in the relevant territories. In that regard, the Committee recalls that the meaning of the reporting procedure is precisely to focus attention and debate on the implementation of the rights guaranteed by the Covenant. Similarly, judges and other members of the legal profession have not given sufficient consideration to the importance of this Covenant within domestic law. The Committee considers that availability of the reports in the library of the House of Commons is insufficient to satisfy the interest of the public at large.

272. The Committee notes the concern expressed to it about the situation of Gibraltar in relation to the right to self-determination recognized in article 1 of the Covenant and calls upon all parties to the existing situation to ensure full respect for all the rights recognized in the Covenant in relation to future developments concerning Gibraltar.

273. The Committee takes note with concern that insufficient measures have been taken to address the apparent disparities in employment patterns and opportunities of certain minority groups and between men and women. In the latter regard, it is regretted that women are still employed disproportionately in lower-paid occupations.

274. The Committee is concerned about difficulties faced in the implementation of article 11 of the Covenant. In this context, it regrets that a large number of households have experienced harassment or illegal eviction and notes that the national housing policy is not adequate to address this problem which particularly affects private tenants who are single parents, have low incomes or, in general, are among the most vulnerable groups of society. The Committee also notes with concern that serious difficulties continue to be faced regarding the enforcement of improvements

to unsafe housing in England and Wales as well as in the handling by the authorities of the growing problem of homelessness.

275. The Committee considers the situation of disadvantaged groups in the education system to be of particular concern. It specifically notes the grave disparities which appear to prevail in the level of education depending on the social origin of the pupil. Regional differences in the quality of the education provided to children is also a matter of concern.

276. The Committee regrets that insufficient measures have been taken towards the development of a universal preschool education scheme. It is concerned about the relatively low proportion of 16 to 18-year-olds who continue in full-time education, the large number of children who do not complete their schooling and the growing reliance in the context of the education system reform upon voluntary contributions by parents. The Committee also regrets the lack of sufficient opportunities available to persons with disabilities to pursue their right to education within the mainstream.

#### D. Suggestions and recommendations

277. The Committee recommends that appropriate measures should be taken to disseminate information on the rights guaranteed under the Covenant to all sectors of society, particularly to judges, civil servants, social workers and members of other professions concerned by its implementation. The Committee encourages the United Kingdom of Great Britain and Northern Ireland to take into account General Comment No. 1 (1989) of the Committee in the preparation of its next periodic report, in order to enhance the transparency of government policy-making with respect to economic, social and cultural sectors.

278. The Committee underlines that efforts should be made to identify the needs of disadvantaged groups in the field of education and to draw on the results of any studies or reviews in the development of policy initiatives to respond to the needs of such groups. The Committee also recommends that priority should be given to expand access to preschool education and to develop basic skill programmes in reading, writing and numeracy, particularly to the benefit of children up to the age of seven. Appropriate school training should also be made available to long-term unemployed persons.

279. In view of the existing situation of older persons and of persons with disabilities, the Committee urges the Government to make an enhanced effort to assess the needs of these groups in relation to their rights under articles 13 to 15 of the Covenant.

280. The Committee urges the State party to improve its monitoring of the problem of inadequate housing and to develop more active and focussed measures to improve the situation. In this connection, it draws the attention of the State party to the provisions of its General Comment No. 4 (1991).

## Part two

### Implementation of articles 10 to 12 and 13 to 15 of the Covenant in Hong Kong

#### A. Positive aspects

281. The Committee notes with interest that Hong Kong has prospered economically to a degree that places considerable material resources at the disposal of the Government to enhance the enjoyment of economic, social and cultural rights in Hong Kong. The Committee acknowledges the significant number of measures that the Government has undertaken in relation to the rights enshrined in the Covenant.

282. The Committee notes with satisfaction the efforts made by the Hong Kong Government to make available to the Hong Kong community the text of the Covenant and the report submitted to the Committee. It welcomes the commitment made that in future, the draft report will be circulated for public comment.

283. The Committee welcomes the terms in the Sino-British Joint Declaration and the Basic Law which affirm that the provisions of the Covenant will remain in force and continue to apply to Hong Kong after 1997. The Committee also welcomes the incorporation of the Covenant as a justiciable constitutional guarantee in article 39 of the Basic Law. While the Committee realizes that the continuation of reporting in respect of Hong Kong after 1997 may pose some legal and technical problems, it emphasizes the very important role played by reporting in relation to the protection of economic, social and cultural rights. The Committee is aware that there are various options by which these problems may be overcome. On this basis the Committee affirms its willingness and indeed its strong wish to receive reports on Hong Kong from the People's Republic of China or, if the authorities so decide, directly from the Hong Kong Special Administrative Region. In the meantime, especially in view of the commitments entered into in the Joint Declaration, the Committee hopes that the People's Republic of China will accede to the Covenant.

#### B. Factors and difficulties affecting the implementation of the Covenant

284. The Committee notes that uncertainties arising from the anticipated transfer of sovereignty to China in 1997 have apparently resulted in the reluctance on the part of the Hong Kong Government to seek to its maximum capacity the protection and promotion of the economic, social and cultural rights of its constituents.

#### C. Principal subjects of concern

285. The Committee regrets that the provisions of the International Covenant on Economic, Social and Cultural Rights are not incorporated into Hong Kong domestic law unlike the International Covenant on Civil and Political Rights. The Committee finds unacceptable the view expressed by the Government that the rights enshrined in the former are "different in nature" from civil and political rights and therefore not capable of being the subject of an enforcement procedure under

domestic law.

286. The Committee is concerned that the relatively low-level of awareness of, and interest in, international human rights law on the part of the judiciary results in the inadequate consideration of the provisions of the Covenant in judicial decision-making to the extent that is permitted by the common law system.

287. The Committee expresses its concern that, in spite of recent Government initiatives to introduce legislation concerning non-discrimination in relation to sex and disability, there is an absence of comprehensive legislation providing protection against discrimination on the grounds referred to in article 2 of the Covenant. The Committee notes with concern that the Government's proposed legislation on sex discrimination includes a number of exclusions and exemptions - in particular the so-called small-house policy - which discriminate against women.

288. The Committee is concerned about the Government's clear objection to the establishment of a human rights commission.

289. The Committee is particularly disturbed by the problem of split families in Hong Kong, especially where it concerns spouses who are forced to live apart from each other and children who are separated from parents and siblings. The Committee is of the view that this situation is the result of Hong Kong's present immigration law, and considers that the separation of families is inconsistent with the obligations under article 10 of the Covenant.

290. The Committee is also concerned that in the case of Hai Ho-Tak it has received conflicting explanations of the reasons for the separation of the child from his parents and as to which authorities are in a position to resolve the problem. The Committee finds these explanations unconvincing and maintains its concern that unduly broad bureaucratic reasons have been used as a justification for a measure which is not compatible with the rights recognized in article 10. The suggestion that the child's parents should apply for a one-way permit would not appear to be an adequate solution, given the very lengthy delay that would result. The Committee urges the Government to reconsider its response to this case. It also notes that no compelling reason has been offered by the Government for its refusal to provide a statutory right of appeal in immigration cases which involve exceptional circumstances of a humanitarian nature and urges that this principle should also be reconsidered.

291. The Committee is deeply concerned by the information it has received about the treatment of Vietnamese asylum-seekers in Hong Kong. It is particularly concerned about the situation of the children and is alarmed by the statements made by the Government that these children have no entitlement to the enjoyment of the right to education or to other rights in view of their status as "illegal immigrants". The Committee considers the situation inconsistent with obligations set forth in the Covenant.

292. The Committee expresses its concern about the legal and social position of foreign employees known as domestic helpers in Hong Kong. It considers that these workers' economic, social and cultural rights are seriously impaired by the so-called two-week rule which provides that a worker

may neither seek employment nor stay more than two weeks in Hong Kong after the expiration of original employment; by the fact that maximum working hours are not set; and by the discriminatory practice of not being allowed to bring their families to Hong Kong, while professional migrant workers from developed countries are allowed to do so.

293. The Committee deplores the plight of persons - most of whom are elderly -living in subhuman conditions in "cage homes", and considers unacceptable the inaction of the Hong Kong Government despite abundant financial resources at its disposal.

294. The Committee notes with concern that the present level of social security payments available to the elderly appears to be insufficient to permit them to enjoy fully their rights under the Covenant. It is particularly concerned about the health and social problems facing elderly people who are totally dependent on Comprehensive Social Security Assistance payments.

#### D. Suggestions and recommendations

295. The Committee urges the Government of the United Kingdom to inform the Committee as soon as possible of the modalities arrived at in agreement with the Government of China by which the reporting obligations under the Covenant will continue after 1997.

296. The Committee enjoins the Government of Hong Kong to establish procedures to allow an appropriate body to adjudicate on complaints of infringement of the rights under the Covenant, and to allow the Hong Kong legislature to consider the desirability of establishing a human rights commission.

297. The Committee recommends that competent authorities responsible for continuing legal education for the judiciary should take active steps to ensure that Hong Kong judges are appropriately updated on a continuing basis on developments in international human rights law.

298. The Committee recommends that the Government should take immediate steps to introduce a comprehensive anti-discrimination legislation especially in relation to all forms of discrimination against women.

299. The Committee recommends a review of the existing immigration policy of Hong Kong with a view to amending the provisions which result in split families.

300. The Committee urges the Hong Kong Government to take immediate steps to ensure that children in refugee camps and those released from them are accorded full enjoyment of the economic, social and cultural rights guaranteed to them under the Covenant. The Committee also recommends a closer cooperation with volunteer organizations and the United Nations High Commissioner for Refugees.

301. The Committee recommends the repeal of the two-week rule and a review of the employment conditions of foreign domestic helpers to provide the full enjoyment of their rights under the Covenant.

302. The Committee urges the Government to take immediate steps, as a matter of high priority, to eradicate the phenomenon of "cage homes", and to ensure that those currently living in such accommodation are provided with adequate and affordable rehousing. The Committee also urges the Government seriously to consider the embodiment into domestic law of the right to housing.

303. The Committee recommends a review of the existing social security system as soon as possible, with a view to addressing the inadequacies of benefits for older persons.

304. The Committee considers that Hong Kong is in the fortunate position of having sufficient resources to address its present inadequacies in relation to its obligations under the Covenant, and urges it to do so as soon as possible.

## **CESCR E/1997/22**

322. The Committee considered the third periodic report of the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong on articles 1 to 15 of the Covenant (E/1994/104/Add.10) at its 39th, 41st, 42nd and 44<sup>th</sup> meetings on 26, 27 and 28 November 1996 and, at its 55th meeting on 6 December 1996, adopted the following concluding observations.

### **A. Introduction**

323. The Committee notes with satisfaction that the report submitted by the State party was prepared in accordance with the Committee's guidelines. It welcomes the large and high-level delegation composed of representatives from the United Kingdom and from Hong Kong. The information submitted in the report and that provided by the delegation in reply to both written and oral questions enabled the Committee to obtain a broad view of the extent of the State party's compliance with its obligations under the Covenant. The Committee also expresses its appreciation for the written replies to its list of issues. The Committee notes with satisfaction that this information enabled it to engage in a constructive dialogue with the State party, particularly concerning the applicable law. However, it is regretted that a number of the Committee's questions relating to reports of what happens in practice were not answered.

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

### **B. Positive aspects**

325. The Committee notes with satisfaction that both the Sino-British Joint Declaration and the Basic Law affirm that the Covenant will continue to apply to Hong Kong after the resumption of sovereignty over the Territory by the People's Republic of China on 1 July 1997.

326. The Committee notes that the Government of Hong Kong has established conditions for a high level of economic prosperity.

327. The Committee welcomes the fact that non-governmental organizations, members of the Legislative Council and other interested parties have had an opportunity to contribute their comments on topics included in the report. The Committee lauds efforts made by the Hong Kong Government to promote public awareness of the Covenant, and to make available to the public at large a substantial number of copies of the report, in English and Chinese, both in printed form and on the Internet.

328. The Committee welcomes the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, in July and August 1995, respectively. It also notes with interest the establishment of the Equal Opportunities Commission in May 1996.



329. The Committee notes that the housing policy of the Government of Hong Kong endeavours to elaborate a long-term programme for public housing construction and to encourage private-sector housing construction so as to make adequate and affordable housing available to all residents of Hong Kong.

#### C. Factors and difficulties impeding the implementation of the Covenant

330. The Committee notes that the uncertainties arising from the resumption of sovereignty over Hong Kong by China have clearly caused some difficulties for the Hong Kong Government in undertaking measures to its maximum capacity towards the promotion and protection of the economic, social and cultural rights of its constituents.

331. The Committee notes that constraints arising from limited habitable land in Hong Kong and from the significant influx of immigrants into the Territory may result in difficulties in implementing certain articles of the Covenant. However, it is also noted that Hong Kong has considerable resources at its disposal to overcome most problems posed by these obstacles.

332. The Committee notes that, while the Government of Hong Kong has established conditions for a high level of economic prosperity, while the latest figures show a gross domestic product per capita in Hong Kong of US\$ 23,500, the fourth highest in the world, and while the Hong Kong Government has accumulated reserves, as of March 1996, of US\$ 20 billion, Hong Kong has one of the most uneven distributions of income in the world: 20 per cent of the population hold 50 per cent of the national wealth, but 250,000 households, i.e. 11 per cent of the population, live in absolute poverty and 850,000 citizens live below the poverty line.

#### D. Principal subjects of concern

333. The Committee deeply regrets that the recommendations formulated in the concluding observations adopted at its eleventh session in 1994 11/ have largely been ignored by the Hong Kong Government.

334. The Committee is concerned that the modalities for the continued submission of reports by Hong Kong after the resumption of sovereignty by China are still at the stage of negotiation and have not been resolved to date.

335. The Committee expresses its disappointment that the principal subjects of concern listed in its concluding observations in 1994 remain unresolved. The Committee reiterates its serious concern on the following issues:

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11/ See E/1995/22, paras. 264-266 and 281-304

(a) The provisions of the International Covenant on Economic, Social and Cultural Rights continue to be excluded from the domestic law of Hong Kong, which already incorporates the provisions of the International Covenant on Civil and Political Rights;

(b) The level of awareness among the judiciary of international human rights law in general and of the International Covenant on Economic, Social and Cultural Rights in particular remains low;

(c) The Hong Kong Government continues to object to the establishment of a human rights commission;

(d) The number of split families continues to grow at an alarming rate;

(e) The treatment of Vietnamese refugees in Hong Kong, particularly those who refuse repatriation to Viet Nam, is repressive and discriminatory;

(f) The "two-week rule" imposed on foreign domestic helpers upon expiration of their contract continues to hinder their enjoyment of economic, social and cultural rights;

(g) The phenomenon of subhuman "cage homes" remains a blight;

(h) The level of social security payments available to the elderly does not allow them to enjoy their rights under the Covenant.

336. The Committee is concerned that the Sex Discrimination Ordinance does not protect those individuals whose right to work is violated by inappropriate account being taken of their sex lives. The Committee further considers it a serious matter that women above the age of 30 suffer discrimination in employment.

337. The Committee regrets the "step-by-step" approach according to which legislation for the protection of vulnerable minorities is adopted primarily on the basis of public-opinion surveys, i.e. on the basis of majority views.

338. The Committee is concerned that the principle of equal pay for work of equal value as elaborated in the non-binding Code of Practice of the Sex Discrimination Ordinance has not been reflected in Hong Kong labour law, thus giving rise to discrimination against women.

339. The Committee expresses its concern regarding the unfavourable status of Hong Kong residents who possess British Overseas residence, but who are not entitled to citizenship of any British territory after 1997 although they are allowed to reside in Hong Kong under Chinese law even if they are not Chinese citizens.

340. The Committee is concerned that, in the field of employment, the Sex Discrimination Ordinance provides relatively insufficient remedies owing to the absence of provisions on reinstatement and full-recovery compensation, whereas both of these remedies are foreseen in the

## Disability Discrimination Ordinance.

341. The Committee expresses its concern about the extent of unemployment or underemployment as a result of rapid economic restructuring. In this connection, the Committee is particularly concerned about the significant numbers of women who are thereby forced out of the labour force and must sometimes resort to precarious activities.

342. The Committee is concerned that Hong Kong labour legislation does not provide protection against unfair dismissal and does not provide for a limitation on hours of work, for a paid weekly rest period or for compulsory overtime pay. This situation is a major hindrance to the enjoyment of just and favourable conditions of work.

343. The Committee expresses its concern that trade-union rights are unduly restricted in Hong Kong. In particular, the Committee is of the view that restrictions applied to affiliation with international trade-union organizations, the prohibition on the formation of federations of trade unions from different industries, and the legal right of employers to dismiss persons involved in strike activities are incompatible with the Covenant.

344. The Committee expresses its deep concern that there is no comprehensive mandatory old-age social security scheme in Hong Kong and that approximately 60 per cent of the population is not protected by any public or private pension plan.

345. The Committee expresses its concern that large numbers of individuals and families who are eligible for comprehensive social security assistance (CSSA) do not apply for it, either because they are not aware of CSSA, because they fear the cultural stigma attached to the concept of welfare assistance, or because they are discouraged from applying by certain practices of the authorities which are not in conformity with Hong Kong law, such as the requirement of children's consent before parents may receive CSSA benefits.

346. The Committee is concerned that CSSA recipients are not granted reimbursement for expenses for traditional medicine, given the fact that Hong Kong residents frequently use traditional medicine and that Hong Kong courts grant such reimbursements in civil liability actions.

347. The Committee reiterates its deep concern at the growing number of split families in Hong Kong. The Committee is of the view that the Hong Kong Government has an obligation to ensure that the criteria applied in deciding on those eligible for legal migration into Hong Kong are consistent with the provisions of the Covenant.

348. The Committee expresses its concern at the absence of a holistic policy for the protection of children from all forms of abuse.

349. The Committee is deeply concerned that the standard of living of elderly singletons in the lowest 20 per cent income group who are not receiving CSSA is lower than that of CSSA recipients. The Committee notes that many of these singletons live in substandard accommodation.

350. The Committee regrets that the Hong Kong Government has not given any clear indication of a time-frame within which it expects to eradicate the deplorable phenomenon of "cage homes". The Committee is particularly concerned about the inadequate conditions of the housing offered by the Hong Kong Government to new immigrants from China, resulting in many of them living in deplorable conditions.

351. The Committee expresses its concern at the inadequate care and protection of the mentally ill and disabled in Hong Kong. In particular, the Committee notes with concern the apparent lack of initiative on the part of the Hong Kong Government to undertake public education to combat discrimination against those with mental disabilities.

352. The Committee takes note with concern that, while the Hong Kong Government has adopted an educational policy in relation to children of immigrant families from China, it has not made sufficient efforts to ensure school placements for these children and to protect them from discrimination.

#### E. Suggestions and recommendations

353. In the light of the terms of the Sino-British Joint Declaration and the recent practice of United Nations human rights treaty bodies, the Committee is of the firm view that, following the resumption of sovereignty over Hong Kong by the People's Republic of China, the People's Republic of China is under an obligation not only to ensure the enjoyment in the Hong Kong Special Administrative Region of the rights guaranteed by the Covenant, but also to submit reports pursuant to article 16 of the Covenant. The Committee therefore considers that it is competent to examine the implementation of the Covenant after 1 July 1997 on the basis of reports or such other material as will be before the Committee, and reiterates its willingness to receive reports in respect of the Hong Kong Special Administrative Region from the People's Republic of China or, if the authorities so decide, directly from the Hong Kong Special Administrative Region. The Committee encourages all parties concerned to work out as soon as possible the modalities of submitting such reports and to inform the Committee of those modalities. The Committee is convinced, however, that the best way to resolve this issue would be for the People's Republic of China itself to become a party to the International Covenant on Economic, Social and Cultural Rights.

354. The Committee urges the Hong Kong Government to consider with the utmost care the Committee's suggestions and recommendations embodied in its concluding observations of 1994, as well as those that follow, and to undertake whatever relevant concrete measures may be necessary.

355. The Committee strongly urges the Hong Kong Government to take every possible measure to develop a fair and open one-way permit-approval mechanism in order to facilitate rapid family reunification.

356. The Committee recommends that the Government undertake more effective measures for the

retraining of those who have lost employment or are underemployed as a result of economic restructuring.

357. The Committee urges the amendment of the Sex Discrimination Ordinance to include provisions on reinstatement in employment and to remove the current maximum amount for recovery compensation

358. The Committee recommends that the Government lift repressive provisions and limitations in relation to trade-union federations, including the prohibition on establishing international affiliation.

359. The Committee recommends a review of government policy in relation to unfair dismissal, minimum wages, paid weekly rest time, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the obligations set forth in the Covenant.

360. The Committee strongly recommends that the Hong Kong Government consider again the adoption of a universal, comprehensive retirement-protection scheme which seeks to ensure that disadvantaged groups are accorded full access to social security.

361. The Committee reiterates in the strongest possible terms its recommendation that the Hong Kong Government undertake, as a matter of high priority, the total eradication of "cage homes".

362. The Committee urges the Hong Kong Government to review the seven-year residence rule applied before providing housing to immigrant families from China, with a view to ensuring their right to adequate housing.

363. The Committee requests that, within 45 days, it receive a comprehensive response to its inquiry regarding three Vietnamese refugees who were denied medical and dental treatment, mainly for refusing to return voluntarily to Viet Nam.

364. The Committee strongly recommends that the Hong Kong Government review the situation concerning persons with mental illness and disability to ensure that their rights under the Covenant are fully protected.

365. The Committee recommends that measures to integrate children of immigrant families from China into the general education system be implemented with maximum possible attention from government authorities.

366. The Committee recommends that these concluding observations be made widely available in English and Chinese in Hong Kong and that copies be provided by the Government to all members of the judiciary and to the relevant echelons of the public service.

## **CESCR E/1998/22**

284. The Committee considered the third periodic report of the United Kingdom of Great Britain and Northern Ireland on articles 1 to 15 of the Covenant (E/1994/104/Add.11) at its 36<sup>th</sup> to 38<sup>th</sup> meetings on 24 and 25 November 1997 and, at its 53<sup>rd</sup> meeting on 4 December 1997, adopted the following concluding observations.

### **A. Introduction**

285. The Committee notes that the report submitted by the State party was prepared in accordance with the Committee's guidelines. It welcomes the presence of a large and high-level delegation from the United Kingdom and notes that the very high quality of the dialogue was enhanced by the presence of a specialist to deal with virtually every article of the Covenant. It further appreciates the extensive and detailed replies to the Committee's list of issues, which greatly facilitated the dialogue. The Committee observes with satisfaction that the information provided in the third periodic report, and in reply to both written and oral questions, enabled it to obtain a comprehensive view of the extent of the State party's compliance with its obligations under the Covenant.

### **B. Positive aspects**

286. The Committee notes the extensive and elaborate administrative infrastructure that exists in the United Kingdom to facilitate implementation of the provisions of the Covenant.

287. The Committee welcomes, in particular, the following new initiatives of the British Government:

(a) The "welfare to work initiative" designed to provide enhanced opportunities for sustained employment and to break prolonged dependency on welfare;

(b) The proposal to enact the European Convention on Human Rights into domestic legislation, which constitutes a considerable departure from the traditional approach not to incorporate international human rights treaties in United Kingdom domestic law.

288. The Committee also takes note of the following initiatives:

(a) The proposal to introduce a national minimum wage, which the Committee hopes will give due regard to the value of work and an employee's ability to enjoy the right to an adequate

standard of living;

(b) The commitment of the Government to ratify the Treaty of Amsterdam, and the resulting application of the European Social Charter in the State party;

(c) The proposal for a “new deal” to give positive support to employment through Training and Enterprise Councils, and job subsidies to the private sector to provide additional employment opportunities, with increased targeting of ethnic minorities who suffer from above average rates of unemployment;

(d) The establishment of the Disability Rights Commission to address issues of the rights of the disabled;

(e) The new policy for a programme of lifelong learning, which should, in particular, target persons in the State party who are functionally illiterate.

289. The Committee notes that significant progress has been made to meet the educational needs of the traveller communities and gypsies.

290. The Committee welcomes the adoption of the Hong Kong Order 1997, which entitles Hong Kong citizens who are not allowed to acquire Chinese nationality to receive United Kingdom citizenship.

### C. Factors and difficulties impeding the implementation of the Covenant

291. The State party reported no specific factors or difficulties impeding the implementation of the Covenant. The Committee notes, however, that, because of the recent change of government, many questions were met with responses that indicated that new initiatives were under consideration, that an advisory group had been appointed to study a particular problem, or that a White Paper was being prepared on a given subject. These answers, while understandable to a certain degree, nevertheless undermined to a significant extent the Committee's ability to evaluate the degree of compliance with certain provisions of the Covenant. Moreover, it became clear from the examination that economic and social difficulties continue to be faced by some of the most vulnerable segments of society, and that the Government's ability to alleviate those difficulties is impaired by its self-imposed budgetary constraints.

### D. Principal subjects of concern

292. The Committee notes that, despite the developed state of the United Kingdom economy and the progress that has been made to lower unemployment generally, there exist unacceptable levels of poverty among certain segments of the population, with particular respect to Northern Ireland. The economic benefits of recent gains in prosperity are unevenly distributed, with a significant widening of the gap between rich and poor as a result. In this respect, the Committee finds it disturbing that approximately 1 million persons do not apply for benefits to which they are entitled, and that the Government limits access to free legal aid with respect to a number of economic and

social rights.

293. The Committee also finds disturbing the position of the State party that provisions of the Covenant, with certain minor exceptions, constitute principles and programme objectives rather than legal obligations, and that consequently the provisions of the Covenant cannot be given legislative effect.

294. The Committee considers that failure to incorporate the right to strike in domestic law constitutes a breach of article 8 of the Covenant. The Committee considers that the common-law approach recognizing only the freedom to strike, and the concept that strike action constitutes a fundamental breach of contract justifying dismissal, is not consistent with protection of the right to strike. The Committee does not find satisfactory the proposal to enable employees who go on strike to have a remedy before a tribunal for unfair dismissal. Employees participating in a lawful strike should not ipso facto be regarded as having committed a breach of an employment contract. The Committee is also of the view that the legally accepted practice of allowing employers to differentiate between union and non-union members by giving pay rises to employees who do not join a union is incompatible with article 8 of the Covenant.

295. The Committee takes the view that, despite the elaborate machinery and legislation for protection against discrimination, there continues to exist to a significant degree de facto discrimination against women, Blacks and other ethnic minorities. The Committee notes that women continue to occupy a significantly lower percentage of managerial positions, particularly in the private sector, and a disproportionate percentage of lower-paid jobs and part-time work. It also notes the persistence of a substantially higher rate of unemployment among Blacks and other ethnic minorities and their disproportionate numbers in lower-paid jobs. The Committee is alarmed that the rate of unemployment among Catholics in Northern Ireland is approximately twice that of Protestants and is substantially above the national rate of unemployment.

296. The Committee is concerned about the condition of many children in the care of the Government, directly or indirectly, in spite of extensive legislative provisions on this subject. The report of Sir William Utting, "People Like Us", indicates a significant reduction in the number of children's homes with increased resort to placement in foster homes. The result of this change is reported to be an increasing incidence of child abuse in foster homes.

297. The Committee notes with concern the serious incidence of domestic violence against women, which the State party has estimated at 680,000 cases in 1995, according to a national crime survey.

298. The Committee expresses its concern that waiting times for surgery can be 18 months or longer. In practice, this situation has worsened over the past six months and now calls for immediate action. The continuation of this situation calls into question whether the State party has made its best efforts to satisfy the provisions of article 12 of the Covenant.

299. The Committee is alarmed by the fact that corporal punishment continues to be practised in schools which are privately financed, and at the statement by the delegation that the Government



does not intend to eliminate this practice.

300. The Committee expresses its concern that homelessness is still a problem that has not been adequately addressed in the United Kingdom, and that vulnerable groups such as travellers and ethnic minorities do not receive sufficient protection against evictions.

301. The Committee expresses its concern that the educational structure in Northern Ireland is heavily segregated, with most Protestants attending Protestant schools and most Catholics attending Catholic schools and only approximately 2 per cent of the school population attending integrated schools. The Committee is of the view that current government policy, which appears to consist of a willingness to consider the conversion of existing Protestant or Catholic schools into integrated schools if it is the wish of the majority in a given school, is ineffective and likely to preserve the status quo. This situation is particularly deplorable given that it has been reported that approximately 30 per cent of parents in Northern Ireland would prefer to send their children to integrated schools.

302. The Committee expresses its concern at the plight of the approximately 13,000 children permanently excluded from school and that a disproportionate number of these children are of African-Caribbean origin.

303. The Committee notes that the Irish language in Northern Ireland does not appear to receive the same degree of financial support and status as Gaelic in Scotland and Welsh in Wales, and expresses its view that such differentiation is unjustified.

#### E. Suggestions and recommendations

304. The Committee suggests that the State party take appropriate steps to introduce the Covenant into legislation, so that the rights covered by the Covenant may be fully implemented. It is encouraged that the State party has taken such action with respect to the European Convention on Human Rights and is of the view that it would be appropriate to give similar due regard to the obligations under the Covenant.

305. The Committee is of the view that social assistance should be more carefully targeted to alleviate poverty among the segments of the population in the United Kingdom who are suffering from long-term unemployment, those whose overall revenue is low (particularly in relationship to family size), and those who are unable to work. Particular attention should be directed at groups which are statistically disproportionately represented at or near the bottom of the income scale and which appear to have difficulty in moving up from the lowest income group. From the Committee's examination, it would appear that such groups would include at least the following: ethnic minorities, women, lone parents, children in vulnerable situations, the elderly, people with disabilities, and Catholics in Northern Ireland. The Committee urges the State party to make further efforts to extend benefits to the approximately 1 million persons who qualify and do not apply to receive them. It is of the view that a less restrictive policy on free legal aid with respect to social and economic rights would facilitate access to these and other social and economic benefits.

306. The Committee recommends that the right to strike be established in legislation and that strike action no longer entail the loss of employment, and expresses the view that the current notion of freedom to strike, which simply recognizes the illegality of being subjected to involuntary servitude, is insufficient to satisfy the requirements of article 8 of the Covenant. The Committee further recommends that the right of employers to grant financial incentives to employees who do not join unions be abolished.

307. The Committee recommends that the State party take more effective steps to combat de facto discrimination, particularly against Blacks and other ethnic minorities, women, and Catholics in Northern Ireland.

308. The Committee recommends that the State party reconsider its policy and procedures for placing large numbers of children in foster homes in light of the reported increase of abuse of children as a result of that policy, and examine the feasibility of greater use of effectively supervised children's homes if this would be in the best interests of the child.

309. The Committee requests the State party to update in its next report information on measures taken to combat the phenomenon of violence against women and update its analysis of which measures appear to yield the best results in dealing with this problem.

310. The Committee finds that the present waiting time for surgery is unacceptable and it therefore recommends that the State party take immediate steps to reduce it.

311. The Committee recommends that the State party take appropriate measures to eliminate corporal punishment in those schools in which the practice is still permitted, i.e. privately financed schools.

312. The Committee recommends that appropriate measures be considered in Northern Ireland to facilitate the establishment of additional integrated schools in areas where a significant number of parents have indicated their desire to have their children enrolled in such schools.

313. The Committee recommends that there be closer monitoring of the incidence of homelessness and forced evictions, and that statistics on these issues be provided in the State party's next periodic report, together with information regarding the steps taken to provide protection in accordance with the Committee's General Comment No. 7 (1997) on forced evictions (see annex IV).

314. The Committee recommends that uniform defined criteria be formulated for school exclusions, and that the State party report on what government programmes, if any, exist to facilitate the insertion of excluded young people into alternative training or apprenticeship programmes.

315. The Committee recommends that the same degree of support and status be given to the Irish language in Northern Ireland as to Gaelic in Scotland and Welsh in Wales.

316. The Committee recommends that consideration be given to requiring that a human rights assessment or impact statement be made an integral part of every proposed piece of legislation or policy initiative on a basis analogous to environmental impact assessments or statements.

317. Finally, the Committee recommends that the concerns expressed in the present concluding observations, as well as the issues raised during the discussion of the third periodic report which remained unanswered, be addressed in the State party's fourth periodic report. It urges the State party to disseminate widely the present concluding observations adopted by the Committee following its consideration of the State party's third periodic report.

## **CESCR E/2003/22**

204. The Committee considered the fourth periodic reports of the United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories on the implementation of the Covenant (E/C.12/4/Add.5, 7 and 8) at its 11th to 13th meetings, held on 6 and 7 May 2002 and made public, at its 27th meeting, held on 17 May 2002, the following concluding observations.

### Introduction

205. The Committee welcomes the fourth periodic reports of the State party, which were prepared in general conformity with the Committee's guidelines.

206. The Committee notes with appreciation the comprehensive written replies given by the State party, as well as the inclusion of representatives of some of the Crown Dependencies and Overseas Dependent Territories in the delegation (Guernsey, Jersey, the Isle of Man, the British Virgin Islands, the Cayman Islands, Bermuda and Montserrat) in the delegation. The Committee welcomes the constructive dialogue with the delegation of the State party, which consisted of government officials with relevant expertise on the provisions of the Covenant. The Committee regrets, however, that in the course of the dialogue, the delegation did not provide more cogent replies to some of the questions posed by members of the Committee.

### Positive aspects

207. The Committee expresses appreciation for the enactment of the Human Rights Act (1998).

208. The Committee commends the establishment of the Northern Ireland Human Rights Commission under the Northern Ireland Act (1998).

209. The Committee also commends the measures undertaken by the State party since the consideration of its third periodic report<sup>18</sup>, such as the New Deal programmes for employment, the introduction of a national minimum wage in 1999 and measures taken to reduce homelessness, "rough sleeping" and permanent exclusion from schools.

210. The Committee notes with appreciation that the State party has adopted the Care Standards Act (2000), establishing a National Care Standards Commission for England and a Care Standards Inspectorate for Wales, setting national minimum standards for the independent health sector to reflect those in the National Health Service.

211. The Committee welcomes the adoption of new cell standards in prisons, which have led to the reduction of overcrowding in cells by 50 per cent, and the elaboration and provision of numerous educational activities for prisoners.

212. The Committee also welcomes the delegation's statement that the State party is currently in

the process of reviewing its reservations to international human rights instruments, with a view to withdrawing those that have been superseded by legislation or practice.

#### Factors and difficulties impeding the implementation of the Covenant

213. In the light of information submitted to it by the State party, the Committee does not find any factors or particular difficulties that impede the full implementation of the Covenant in the United Kingdom of Great Britain and Northern Ireland. In the Overseas Dependent Territories, the limited population and the lack of resources can be considered as factors impeding the enjoyment of economic, social and cultural rights.

#### Principal subjects of concern

214. The Committee deeply regrets that, although the State party has adopted a certain number of laws in the area of economic, social and cultural rights, the Covenant has still not been incorporated in the domestic legal order and that there is no intention by the State party to do so in the near future. The Committee reiterates its concern about the State party's position that the provisions of the Covenant, with minor exceptions, constitute principles and programmatic objectives rather than legal obligations that are justiciable, and that consequently they cannot be given direct legislative effect.<sup>19</sup>

215. The Committee regrets that the State party has not yet prepared a national human rights plan of action as recommended in paragraph 71 of the Vienna Declaration and Programme of Action,<sup>8</sup> and is deeply concerned about the delegation's statement that there is no intention of doing so.

216. The Committee is concerned that human rights education provided in the State party to schoolchildren, the judiciary, prosecutors, government officials, civil servants and other actors responsible for the implementation of the Covenant does not give adequate attention to economic, social and cultural rights.

217. The Committee is concerned about the persistence of de facto discrimination in relation to some marginalized and vulnerable groups in society, especially ethnic minorities and persons with disabilities, in various fields, including employment, housing and education. The Committee regrets the unwillingness of the State party to adopt comprehensive legislation on equality and protection from discrimination, in accordance with article 2, paragraph 2, and article 3 of the Covenant.

218. The Committee is concerned that the national minimum wage is not set at a level that provides all workers with an adequate standard of living in accordance with article 7, paragraph (a) (ii), and article 11 of the Covenant. The Committee is also concerned that the minimum wage protection does not extend to workers under 18 years of age. The Committee considers that the minimum wage scheme is discriminatory on the basis of age, as it affords a smaller proportion of the minimum wage to persons between 18 and 22 years of age.

219. The Committee reiterates its concern that the failure to incorporate the right to strike in domestic law,<sup>20</sup> constitutes a breach of article 8 of the Covenant.

220. The Committee is deeply concerned that the incidence of domestic violence has increased in recent years.

221. The Committee reiterates its concern about the persistence of considerable levels of poverty, especially in certain parts of the country, such as Northern Ireland, and among certain sections of the population, such as ethnic minorities, persons with disabilities and older persons. Moreover, despite measures taken by the State party to combat poverty and social exclusion, the gap between the rich and poor in the State party has increased, according to information provided by the State party. The Committee also notes with particular concern the high levels of child poverty among certain groups of society in the State party.

222. The Committee is concerned at the persistence of homelessness, particularly among certain groups of society, such as ethnic minorities. The Committee is further concerned that a large number of the homeless are alcoholics or suffer from mental illnesses.

223. The Committee notes with concern that poor quality housing and “fuel poverty” continue to be a problem for a large number of families and individuals.

224. The Committee is concerned about the high incidence of HIV/AIDS in some of the State party’s Caribbean territories. It is particularly concerned about the number of HIV/AIDS cases in the Turks and Caicos Islands and St. Vincent and the Grenadines, and the lack of availability of, and access to, anti-retroviral medication for migrant workers and AIDS orphans.

225. The Committee notes with concern that the introduction of tuition fees and student loans, which is inconsistent with article 13, paragraph 2 (c), of the Covenant, has tended to worsen the position of students from less privileged backgrounds, who are already underrepresented in higher education.

226. The Committee reiterates the concern it expressed in its previous concluding observations<sup>21</sup> that the educational structure in Northern Ireland continues to be heavily segregated on the basis of religion, despite the increased demand for integrated schools.

### Suggestions and recommendations

227. Affirming the principle of the interdependence and indivisibility of all human rights, and that all economic, social and cultural rights are justiciable, the Committee reiterates its recommendation made in 1997<sup>22</sup> and strongly recommends that the State party re-examine the matter of incorporation of the Covenant in domestic law. The Committee points out that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under an obligation to comply with it and to give it full effect in the domestic legal order. In this

respect, the Committee draws the attention of the State party to its general comment no.9 (1998) on the domestic application of the Covenant.

228. The Committee further recommends, recalling its recommendation made in 1997<sup>23</sup> that the State party review and strengthen its institutional arrangements, within the government administration, which are designed to ensure that its obligations under the Covenant are taken into account, at an early stage, in the Government's formulation of national legislation and policy on issues such as poverty reduction, social welfare, housing, health and education. Given that its general comments are based upon experience gained over many years, including the examination of numerous States parties' reports, the Committee urges the State party to give careful consideration to its general comments and statements when formulating policies that bear upon economic, social and cultural rights.

229. The Committee encourages the State party, as a member of international financial institutions, in particular IMF and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties under the Covenant, in particular with the obligations contained in article 2, paragraph 1, article 11, paragraph 2, article 15, paragraph 4 and article 23 concerning international assistance and cooperation.

230. The Committee urges the State party to prepare, as soon as possible, a national human rights plan of action, in accordance with paragraph 71 of the Vienna Declaration and Programme of Action.

231. The Committee strongly recommends that the State party establish a national human rights commission for England, Wales and Scotland, with a mandate to promote and protect all human rights, including economic, social and cultural rights.

232. The Committee strongly recommends the inclusion of effective protection for economic, social and cultural rights, consistent with the provisions of the Covenant, in any bill of rights enacted for Northern Ireland.

233. The Committee urges the State party to ensure that human rights education curricula and training programmes for schoolchildren and for the judiciary, prosecutors, government officials, civil servants and other actors responsible for the implementation of the Covenant give adequate attention to economic, social and cultural rights.

234. The Committee urges the State party to take more effective steps to combat de facto discrimination, in particular against ethnic minorities and people with disabilities, especially in relation to employment, housing and education. The Committee strongly recommends that the State party enact comprehensive legislation on equality and non-discrimination in British law, in conformity with article 2, paragraph 2, and article 3 of the Covenant.

235. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Covenant undertaken by the State party to follow up on the Durban Declaration and Programme of Action.<sup>10</sup>

236. The Committee urges the State party to ensure that the level of the national minimum wage is determined with due regard to the requirements of an adequate standard of living. Moreover, the Committee recommends that minimum wage protection be extended to workers under 18 years of age and that the scheme be applied in a non-discriminatory manner to persons between 18 and 22 years of age.

237. The Committee reiterates its recommendations made in 1997<sup>24</sup> that the right to strike be incorporated in legislation and that strike action no longer entail the loss of employment.

238. The Committee recommends that the State party continue its efforts to combat domestic violence and, in particular, to ensure that there are sufficient refuge places to meet the needs of victims of domestic violence. The Committee requests that the State party provide information in its next periodic report on further measures taken by the State party in relation to domestic violence, as well as on the results and effectiveness of such measures.

239. Given the principle of the dignity of the individual, which provides the foundation for international human rights law (see para. 41 of the Committee's general comment no. 13 (1999) on the right to education (art. 13 of the Covenant)) and in the light of article 10, paragraphs 1 and 3, of the Covenant, the Committee recommends that the physical punishment of children in families be prohibited, in line with the recommendation of the Committee on the Rights of the Child made in 1995<sup>25</sup> in its concluding observations on the State party.

240. The Committee urges the State party to continue to address the problem of poverty and social exclusion as a matter of high priority, with special focus on the needs of marginalized and vulnerable groups, and particular regions, such as Northern Ireland. When formulating its anti-poverty policies and programmes, the State party is urged to give the most careful attention to the Committee's Statement on poverty and the International Covenant on Economic, Social and Cultural Rights.<sup>16</sup>

241. The Committee recommends that the State party focus its efforts to combat homelessness on those groups in society which are disproportionately affected, such as ethnic minorities. The Committee further recommends that the State party take the necessary measures to ensure that homeless persons suffering from serious health problems receive adequate health care.

242. The Committee recommends that the State party take immediate measures to improve the situation of the large number of families and individuals who live in poor housing conditions and to relieve the situation of those who are "fuel poor".

243. In the context of HIV/AIDS, the Committee urges the State party to ensure the availability of, and equal access to, anti-retroviral medication for all individuals in Overseas Dependent Territories.

244. The Committee urges the State party to take effective measures to ensure that the introduction of tuition fees and student loans does not have a negative impact upon students from less privileged backgrounds, in accordance with paragraphs 14, 20 and 45 of the Committee's general comment



no. 13 (1999) on the right to education. The Committee requests the State party to provide, in its next periodic report, detailed information on the impact of tuition fees and student loans on lower socio-economic groups.

245. The Committee reiterates its recommendation made in 1997<sup>27</sup> (9) that the State party consider appropriate measures in Northern Ireland to facilitate the establishment of additional integrated schools in areas where a significant number of parents have indicated their desire to have their children enrolled in such schools.

246. The Committee encourages the State party to withdraw its reservations to the Covenant that have become redundant.

247. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular among State officials and the judiciary. It also encourages the State party to involve non-governmental organizations and other members of civil society in the preparation of its fifth periodic report.

248. Finally, the Committee requests the State party to submit its fifth periodic report by 30 June 2007 and to include in that report detailed information on the steps it has undertaken to implement the recommendations contained in the present concluding observations.

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8/ Adopted by the World Conference on Human Rights, held in Vienna from 14 to 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

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10/ Adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 31 August to 8 September 2001 (A/CONF.189/12, chap. I).

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16/ [*Official Records of the Economic and Social Council*], 2002, *Supplement No. 2* (E/2002/22-E/C.12/2001/17), annex VII.

...

18/ See *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/22-E/C.12/1997/10), chap. V, paras. 284-317.

19/ *Ibid.*, para. 293.

20/ *Ibid.*, para. 294.

21/ *Ibid.*, para. 301.

22/ *Ibid.*, para. 304.

23/ *Ibid.*, para. 316.

24/ *Ibid.*, para. 306.

25/ See *Official Records of the General Assembly, Fifty-first Session, Supplement No. 41* (A/51/41), para. 497.

26/ See *Official Records of the Economic and Social Council, 1998, Supplement No. 2* (E/1998/22-E/C.12/1997/10), chap. V, para. 312.