UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/UKOT/99/5
11 April 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Addendum

OVERSEAS TERRITORIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[9 December 1999]

This report is issued without editing, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

GE.00-41329

I. Introduction

1. The present report contains, in its several annexes, the United Kingdom's latest periodic reports under the Covenant in respect of its Overseas Territories (as its dependent territories overseas are now styled) to which the Covenant has been extended. These reports are set out below as follows:

Annex A	Bermuda
Annex B	British Virgin Islands
Annex C	Cayman Islands
Annex D	Falkland Islands
Annex E	Gibraltar
Annex F	Montserrat
Annex G	Pitcairn
Annex H	St. Helena
Annex I	Turks and Caicos Islands

2. The most recent periodic reports submitted under the Covenant in respect of these Overseas Territories were the 3rd reports, which were examined by the Committee in April 1991. The United Kingdom Government very much regrets the delay that has occurred since then in the preparation and submission of the present reports but, in view of the time that has elapsed, hopes that it will be acceptable to the Committee for them to be submitted as the combined 4th/5th reports in respect of the Territories concerned.

II. General aspects of United Kingdom's policy towards Overseas Territories

3. As background to the individual reports which follow, the United Kingdom Government draws the Committee's attention to a significant evolution of its policy towards its Overseas Territories which has particular relevance to human rights. This has its origin in a thorough review of the relationship between the United Kingdom and its Overseas Territories that was instituted by the current Administration in the United Kingdom shortly after it took office in May 1997. In consequence of that review, a White Paper was laid before the United Kingdom Parliament in March 1999 by the Secretary of State for Foreign and Commonwealth Affairs, setting out the general approach which would henceforth be followed by the United Kingdom Government in relation to the Overseas Territories and describing in detail the particular policies and measures which the United Kingdom Government was pursuing, or intended to pursue, in accordance with that approach. Copies of that White Paper, which is entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories", are being transmitted to the Committee's Secretariat together with the present report. But the Committee's attention is drawn at this point to the following particular aspects of it which are of special relevance to the matters dealt with by the Covenant.

(a) Self-determination

The relationship between the United Kingdom and its Overseas Territories is now to be based on a new partnership. This partnership is to be promoted, in the United Kingdom itself, by new Departments in the Foreign and Commonwealth Office and in the Department for International Development, the two Ministries of the United Kingdom

Government that are principally concerned. These new Departments are vested with the primary responsibility for the affairs of the Overseas Territories and each of them is accountable to a Minister specifically designated for that purpose. The Overseas Territories, for their part, are being encouraged to examine their own governmental and other structures with a view to making the new partnership effective. In addition, there will in future be a structured dialogue between the Overseas Territories Governments and the United Kingdom Government, involving, *inter alia*, an annual Overseas Territories Council comprising the Chief Ministers or other representatives of the Overseas Territories Governments and the Ministers of the United Kingdom Government responsible for the Overseas Territories. Underpinning all this is the United Kingdom Government's recognition of, and its determination to respect in relation to each of its overseas Territories, the right of self-determination that is set forth in Article 1 of the Covenant. In accordance with that right, the White Paper makes clear that, as in the past, where there is a general desire on the part of the population of an Overseas Territory to proceed to full independence and that is a practical option, the United Kingdom Government will respect that desire and will not stand in the way of its fulfilment. But where the desire is to retain the present connection with the United Kingdom, that, too, will be respected and the United Kingdom Government, for its part, will continue to honour the commitments that are inherent in the connection.

(b) Self-determination

The White Paper announced the United Kingdom Government's intention to introduce legislation, as soon as parliamentary time allows, to confer full British citizenship on all British Dependent Territories citizens (as the inhabitants of the Overseas Territories generally now are). Full British citizenship will carry with it the right of abode in the United Kingdom and freedom of movement and residence elsewhere in the European Union and in the European Economic Area. But those persons who prefer to retain their British Dependent Territories citizenship will be able to do so. Moreover, the United Kingdom Government will not insist on reciprocity in respect of the right of abode: that is to say, any Overseas Territory that wishes to continue to impose immigration and residence restrictions on persons who do not "belong" to that Territory will be free to do so.

(c) Self-determination

As the White Paper makes clear in various contexts, the partnership between the United Kingdom and its Overseas Territories entails responsibilities on both sides. The United Kingdom has a commitment to defend the Overseas Territories, to encourage their sustainable development **S** and the White Paper described in some detail what the United Kingdom Government's policies and measures are in that respect **S** and to look after their interests internationally. In return, the United Kingdom Government expects from the Overseas Territories Governments the highest standards of probity, law and order, good government and observance of the United Kingdom's international commitments. In this context, while the United Kingdom Government is confident that human rights are generally respected and protected in all the Overseas Territories, it recognises that there is still a need for further measures to be taken, in certain respects, to ensure that the laws of the Overseas Territories conform fully with the relevant obligations of the United Kingdom under various human rights instruments and, more generally, with the broadly accepted norms in this field. In particular, the United Kingdom Government is concerned that all the Overseas Territories should adopt **S** as most of them, indeed, already do **S** substantially the same position as obtains in the United Kingdom itself in respect of capital punishment, judicial corporal punishment and the treatment as criminal offences of homosexual acts

between consenting adults in private. To this end, it has strongly urged **S** and will, if necessary, continue to urge **S** the Governments of those Overseas Territories whose laws may be open to criticism in any of these respects to introduce appropriate amending legislation at the earliest suitable opportunity. Failing that, as the White Paper makes clear, the United Kingdom Government may have to consider the possibility of itself legislating in this matter on behalf of those Overseas Territories.

Where, as regards the above issues, there are particular matters to bring to the Committee's notice in respect of individual Overseas Territories, these are more fully discussed in the respective reports for those Territories, as set out in the following Annexes.

ANNEX A **S** BERMUDA

I. General information

4. The Committee is referred to the core document (the "country profile") in respect of Bermuda which is contained in Annex II to HRI/CORE/1/Add.62 (pp. 12-23). Save as is indicated in the following paragraphs of this Annex, the position as regards the matters covered by that core document remains substantially as there described except that the following items of background statistical information (which in some cases are still provisional and subject to correction or are based on projected estimates) can now be substituted for the corresponding information set out in paragraph 4 of the core document:

Per capita income	$31,200 (1996/97)
Gross national product	$2,259.6 million (1996/97)
Rate of inflation	2.0% in 1997
Rate of unemployment	
Males	4% (1991 census)
Females	2% (1991 census)
Literacy rate	97% (1995 estimate)
Population	61,210 (1998 provisional estimate)
Life expectancy	
Males	70 (1997)
Females	78 (1997)
Infant mortality rate	4.7 per 1,000 live births (1997)
Birth rate	13.7 per 1,000 population (1997)
Percentage of population	
Under 15 years old	
Total	19.2% (1998 provisional estimate)
Males	19.8% (1998 provisional estimate)
Females	18.7% (1998 provisional estimate)
Over 65 years old	
Total	10.0% (1998 provisional estimate)
Males	8.6% (1998 provisional estimate)
Females	11.25% (1998 provisional estimate)
Percentage of households headed by women	36% (1993 Household Expenditure Survey).

5. It is to be noted that, as part of a reshuffle of Government Ministries that took place on 6 May 1998, a new Ministry, styled the Ministry of Development, Opportunity and Government Services was created. It has responsibility for a number of areas and bodies concerned with "equality of opportunity" and "promotion opportunities", including (and of particular relevance to the Covenant) the Commission for Unity and Racial Equality and the Human Rights Commission (see paragraph 8 below).

II. Information relating to substantive articles of Covenant

6. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including the problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report in respect of Bermuda **S** or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

7. In exercise of their right to self-determination, the people of Bermuda took part, on 16 August 1995, in a referendum on the question of whether Bermuda should proceed to full independence as a sovereign State or should remain a dependent territory of the United Kingdom. In that referendum, the proposal to proceed to independence was rejected. The votes cast were as follows:

In favour of independence	5,714 votes
Against independence	16,369 votes.

Article 2

8. In relation to the prevention of discrimination **S** not merely for the purposes of Article 2 (that is to say, as regards the enjoyment of the rights enunciated by the Covenant), but also more widely; and not merely with respect to racial discrimination, but also with respect to discrimination on various other grounds **S** the Committee is referred to the detailed account of recent changes in Bermuda law relating to discrimination, and other recent measures taken in that field by the Bermuda Government, that is set out in the United Kingdom's 14th periodic report in respect of Bermuda under the International Convention of the Elimination of All Forms of Racial Discrimination (ICERD) (paragraphs 196-204 of CERD/C/299/Add.9). The Committee is referred in particular to the account given in that report of the wider functions now vested in the Human Rights Commission (originally established by the Human Rights Act 1981) and to the functions of the Commission for Unity and Racial Equality (CURE) which was established by the Commission for Unity and Racial Equality Act 1994. The draft Code of Practice for Race Relations in the Workplace that is referred to in paragraph 201 of CERD/C/299/Add.9 was in fact issued in September 1997 (having been previously approved by the Legislature) under the title "Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment". As that title indicates, the Code is aimed not only at racial discrimination but also at discrimination between the sexes in the employment field. A copy of the Code is being transmitted to the Committee's Secretariat together with the present report.

Article 3

9. In December 1995 the Bermuda Government appointed a Task Force to review and assess the status of women in Bermuda and, in the light of its assessment, to recommend any necessary legislation and/or policy initiatives or programmes. The detailed mandate of the Task Force was as follows:

(1) To compile and assess statistical data and information on the status of women in Bermuda with respect to:

(a) Employment and business activities;

(b) Decision-making positions in the community;

(c) Marriage, divorce and the family;

(d) Domestic violence and child abuse;

(e) Educational opportunities and career-training;

(f) Involvement in crime;

(g) Health and fitness;

(h) Child care and after-school care;

(2) To identify any social, educational, economic, legislative or political factors, policy barriers or structures that prevent the full participation of women in any aspect of Bermudian life;

(3) To make recommendations to the Minister on legislative and policy initiatives, social and/or educational programmes and any other initiatives required to deal with each area identified.

10. In March 1997 the Task Force submitted its report to the Minister of Legislative Affairs and Women's Issues (whose responsibilities in this matter have now passed to the new Ministry of Health and Family Services (see paragraph 11 below) and it was laid before the Bermuda Legislature in June 1997. A copy of the report, which runs to over 150 pages plus Annexes, is being transmitted to the Committee's Secretariat together with the present report. A summary of the Task Force's 190 separate recommendations (by no means all of which, of course, are directly relevant to the Covenant) constitutes Section 4 of its report (pp. 136-149). Many of the recommendations require further wide consultation and/or endorsement by other Departments of the Bermuda Government and some will require the enactment of fresh legislation, and their implementation is therefore not solely for the Ministry of Health and Family Services to determine or to effect. But it is for that Ministry to pursue and promote the necessary changes, whether in law or in practice, and to monitor progress; and this is currently being done. The following is a list of the action so far taken in pursuance of the Task Force's recommendations (again, ranging more widely than is directly relevant to the Covenant):

S A committee was formed to examine the issue of pay equity and the need for an Equal Pay Act and the issue of obligatory minimum benefits in the workplace (Recommendations 11 and 18). On the first of these issues, an amendment to the Human Rights Act 1981 that was passed by the Legislature in July 1998 now

gives effect to the principle of equal pay for equal work, subject to such qualifications as may be required to accommodate a seniority or merit system or a system based on productivity;

S The Recommendation (Recommendation 14) that there should be a Code of Employment Practice is satisfied by the issue in 1996 of a Code of Good Industrial Relations Practice. This Code, published by the Labour Department of the Ministry of Labour, Home Affairs and Public Safety, had previously been submitted to the Legislature and approved by it. A copy of the Code is being transmitted to the Committee's Secretariat together with this report. The Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment, referred to in paragraph 8 above, is also relevant in this context;

S A policy for dealing with sexual harassment is being developed for government employees (Recommendation 17);

S A Domestic Violence (Protection Orders) Act and a Stalking Act were both enacted in September 1997 (Recommendation 36);

S The Ministry has established a Community Roundtable on Domestic Violence to improve the community response to cases of such violence (Recommendation 38);

S The Ministry has begun to assemble brochures, pamphlets and educational material for translation into Portuguese to assist in raising awareness of the existence of helping services for women in the Portuguese community in Bermuda (Recommendation 83);

S Legislation has been enacted (in pursuance also of a recommendation in the Tumim Report (see paragraph (12) below) which will permit the videotaping of police interviews for use as evidence in court proceedings and the Police service is making arrangements for its implementation (Recommendation 52);

S Legislation has been enacted to enable the children of a Bermudian woman to acquire Bermudian status on the same conditions as the children of a Bermudian man (Recommendation 82). The removal of the previous discrimination in this respect will facilitate the early extension to Bermuda of the Convention on the Elimination of All Forms of Discrimination Against Women;

S Though the Department of Labour and Training has been unsuccessful in its attempt to develop, through the Bermuda College, an examination to provide a local equivalent to High School Graduation (Recommendation 114), it is now pursuing negotiations with an overseas education agency to set up a General Equivalent Diploma (G.E.D.) in Bermuda;

S The Bermuda Youth Counselling Service, operated by the National Drug Commission, began on 1 February 1998 to offer counselling services for young persons with alcohol or drug problems (Recommendation 132);

S Regulations prescribing minimum standards for nursing homes are currently being drafted (Recommendation 158);

Regulations prescribing minimum standards for day care and nurseries have been drafted (Recommendation 175);

S A sex offenders rehabilitation programme for prison inmates has been established (Recommendation 81).

11. The Bermuda Government established a new Ministry **S** the Ministry of Legislative Affairs and Women's Issues **S** on 1 April 1996 to enhance the ability of the Government to consult and obtain advice on issues of concern to women and to women's organisations. As a result of a reshuffle of Government Ministries that took place on 6 May 1998, the responsibility for Women's Issues was transferred to the Ministry of Health and Family Services.

Article 6

12. The only ordinary offence for which the death penalty may now be imposed in Bermuda is premeditated murder, defined as unlawful killing committed with the intention to kill a person, that intention having been deliberately formed before the commission of the act in question and still existing at the time of the commission of that act. Certain old provisions still on the statute-book also provide for the death penalty for the offence of treason and certain offences of piracy. The last occasion when the death sentence was in fact carried out in Bermuda **S** this was of course for premeditated murder **S** was in December 1977. As reported in paragraph 3(c) above, the United Kingdom Government is currently urging the Bermuda Government to bring Bermuda's law in this respect into line with the law of the United Kingdom. On 16 July 1999 the Bermuda Parliament debated the United Kingdom Government's White Paper ("Partnership for Progress and Property") (see paragraph 3 above). Speaking on "Good Governance and Human Rights", the Minister of Development, Opportunity and Government Services advised the Bermuda Parliament that the Bermuda Government intended to introduce a Bill into Parliament for the amendment of the relevant sections of the Criminal Code to "effectively abolish judicial corporal punishment and the death penalty in Bermuda".

Article 7

13. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to Bermuda on 8 December 1992. The extension took effect on 8 January 1993. To give effect in the law of Bermuda to the obligations imposed by the Convention, the Criminal Justice Act 1988 (Torture) (Overseas Territories) (Amendment) Order 1992 extended to Bermuda the relevant provisions (Sections 134 and 135) of the Criminal Justice Act 1988 of the United Kingdom. These are the provisions which create and define the offence of torture and provide an appropriately severe punishment for it. Subsequently, and to complete the legislative consequences of the extension of the Convention to Bermuda (in particular to give effect to its provisions relating to the extradition, etc. of persons accused of involvement in acts of torture), the Extradition (Torture) (Bermuda) Order 1995 was made in December 1995 and came into force on 12 January 1996. It has now been replaced, for technical reasons and without any alteration in the substance of the law, by the Extradition (Torture) Order 1997.

14. The United Kingdom's initial report in respect of Bermuda under the Convention against Torture, etc. was submitted to the Committee Against Torture in June 1995. That report, which is contained in paragraphs 258-304 of CAT/C/25/Add.6, was examined by the Committee Against Torture in November 1995. It describes in detail the provisions of Bermuda law (in addition to the provisions mentioned above), and also the features of Bermuda administrative practice, which are relevant to the obligations imposed by the Convention; and the Human Rights Committee is

accordingly referred to it for a full account of how Article 7 of the Covenant is given effect to in Bermuda. The United Kingdom's second (periodic) report in respect of Bermuda under the Convention against Torture was submitted to the Committee Against Torture in July 1998 (see CAT/C/44/Add.1) and was examined by the Committee Against Torture in November 1998. It adds little to the initial report except as regards certain recommendations of the Tumim Report (see paragraph 16 below). As the initial report indicated, Bermuda is also subject to (and machinery exists for ensuring compliance with) a number of other international obligations in this field, notably those arising under Article 3 of the European Convention on Human Rights.

Article 9

15. Until recently, it remained an offence under the law of Bermuda (by virtue of Section 2(d) of the Summary Offences Act 1926) for a person to "wander abroad with no fixed or proper lodging or not having any visible means of support or not giving a good account of himself". It is now accepted, following a recommendation in the Tumim Report (see paragraph 16 below), that such a provision, authorising a sentence of imprisonment to be imposed for conduct which is not intrinsically criminal, is not justified in today's society; and the 1926 Act was accordingly amended by the Summary Offences Amendment Act 1997 to remove that offence from the statute-book.

Article 10

16. In 1992 the Bermuda Government appointed Judge Sir Stephen Tumim, who was then Her Majesty's Chief Inspector of Prisons in England and Wales, to preside over a wide-ranging review of the criminal justice system in Bermuda. This "Criminal Justice Review Board" produced its report ("the Tumim Report") in October 1992; a copy is being transmitted to the Committee's Secretariat together with the present report. Some of the Board's 34 specific recommendations have already been implemented or are in the course of being implemented others are still being studied by the relevant organs of the Bermuda Government in conjunction, where appropriate, with interested non-governmental bodies and organisations. Among the Review Board's recommendations were some relating to the treatment of prisoners, covering such matters as the separation of young offenders from adult offenders, the training of prisons staff and programmes preparing prisoners for release. Specifically in relation to the segregation of juvenile offenders, the Tumim Report contained two separate, but connected, recommendations. The first (Recommendation 19) was that "no person under the age of 16 years should be held by the Prison Service". The second (Recommendation 25) was that "young offenders, if located at the new prison facility, should have separate accommodation and facilities from adults". In response to the first of these recommendations, the Bermuda Government has established a secure unit at the Youth Development Centre which is operated by the Department of Child and Family Services and is not part of the prison system. This is a temporary measure until a secure unit for young offenders can be permanently established. As regards the second recommendation, the position is that, though the law does permit the holding of young offenders in prison and though there are not separate facilities to accommodate them in the new prison facility (Westgate (see paragraph 17 below)), every effort will be made, if it ever becomes necessary to place young persons there, to keep them separate from adults.

17. In 1994, the Bermuda Government opened a new, "state of the art" prison (Westgate) which is designed to accommodate 208 male prisoners. Prisoners previously held at the Casemates prison were transferred to Westgate.

18. Attention is drawn to the fact, as reported in paragraph 10 above, that a sex offenders rehabilitation programme for prison inmates has been established in the light of one of the recommendations of the Task Force on Women's Issues.

Article 14

19. Attention is drawn to the fact (see paragraph 10 above) that legislation has been enacted **S** and arrangements are being made for its implementation **S** to render videotaped records of police interviews admissible as evidence in court proceedings. This is in response to recommendations made both by the Task Force on Women's Issues and in the Tumim Report.

Article 20

20. As reported in paragraph 202 of the latest report in respect of Bermuda under ICERD (see paragraph 8 above), the Criminal Code Amendment Act 1995 created two new offences: racial harassment and racial intimidation. With specific reference to Article 20 of the Covenant, and as was also explained in the ICERD report, it is also an offence, under the Human Rights Act 1981, as amended, for a person to publish threatening, abusive or insulting written matter, or to use threatening, abusive or insulting words in a public place or at a public meeting, if he does so with intent to promote or excite ill-will or hostility against any section of the public distinguished by colour, race or ethnic or national origin and if that is the likely effect of that written matter or those words. It is also an offence for a person to do any act calculated to excite or promote such ill-will or hostility if he does it with the intent to incite another to commit a breach of the peace or if he has reason to believe that a breach of the peace is the likely result.

Article 24

21. The Convention on the Rights of the Child was extended to Bermuda on 7 September 1994. The United Kingdom's first report under that Convention in respect of Bermuda was submitted to the Committee on the Rights of the Child in March 1999.

22. A Task Force on Child Abuse was appointed by Bermuda's Minister of Health and Social Services in November 1993. It delivered its report in April 1996 and this was laid before the Bermuda Legislature in November 1996. A copy of the Task Force's report is being transmitted to the Committee's Secretariat together with the present report. One of its recommendations highlighted the importance of the role of an advocate in protecting the rights of children and the need to establish advocacy services at various levels **S** on the lines, perhaps, of similar services established in other countries, such as some of the Provinces of Canada. (A copy of a Background paper on Child Advocacy, which was issued in January 1995 in connection with the consideration being given to this topic, is also being transmitted to the Committee's Secretariat together with the present report.) The Ministry of Health and Social Services has accepted this recommendation from the Task Force and is currently working to create a comprehensive system of advocacy to help ensure that the rights of all children are protected.

23. A number of the recommendations of the Task Force on Women's Issues (see paragraphs 9 and 10 above) have a direct relevance for the protection of children in accordance with Article 24 of the Covenant; and, as will be seen from paragraph 10, a number of the measures already taken or under active consideration by the Bermuda Government in the light of those recommendations are aimed at affording such protection.

ANNEX B S BRITISH VIRGIN ISLANDS

I. General information

24. The Committee is referred to the core document (the "country profile") in respect of British Virgin Islands (the BVI) which is contained in Annex III to HRI/CORE/1/Add.62 (pp. 24-30). Save as is indicated in the following paragraphs of this Annex, the position as regards the matters covered by that core document remains substantially as there described in it. However, the following more up-to-date information should be substituted for the information set out in paragraph 1 of the core document:

		1997		**1998**
Per capita income (US$)		28,434	30,117	
Gross domestic product (millions US$)		543.3		586.7
Rate of inflation		4.3%		5.97%
External Debt (millions US$)	35.4%		32.3%	
Rate of unemployment	3.56%		N/A	
Adult literacy rate		98.2%		98.2%
Percentage of population speaking English as mother tongue		N/A		90.0%
Life expectancy				
Males		72.5		N/A
Females		76.5		N/A
Infant mortality rate (per 1,000)		5.7		N/A
Maternal mortality rate	0.0%		0.0%	
Fertility rate		2.21%		1.74%
Percentage of population				
Under 15		26.97%		26.86%
65 and over		5.04%		4.9%
Population		19,107	19,482	

[NB: It is estimated that about 40 per cent of the population are immigrants from Commonwealth countries in the Caribbean, mostly from St Kitts-Nevis and St Vincent. A further 10 per cent are from N. America, Europe and other countries, the fastest-growing group being from the Dominican Republic.]

Percentage of population in urban and rural areas	(Tortola)	(Tortola)	
	82.11%		82.11%
(The broadly equivalent distinction in the BVI is between Tortola and the other islands)	(Other Islands)	(Other Islands)	
	18.0%		18.0%
Percentage of households headed by women	N/A		28.7%

25. In addition, the following information brings the core document up-to-date in the further respects indicated. The paragraphs cited in brackets are those of the core document.

(a) The Executive Council now comprises the Chief Minister and three other Ministers as well as the Attorney General as an *ex officio* member (paragraph 5);

(b) As regards the Legislative Council (paragraph 6), the reference to "an island-wide electoral district" should have been a reference to "a territory-wide electoral district";

(c) It is now the practice for statutes passed by the Legislative Council and assented to by the Governor to be styled "Acts" rather than "Ordinances" (paragraph 7);

(d) The maximum period which may elapse after the dissolution of the Legislative Council before a general election is held is now three months (paragraph 8;)

(e) The principal political parties in the BVI are now the Virgin Islands Party; the Concerned Citizens Movement; the National Democratic Party; and the United Party (paragraph 14);

(f) It is now the practice for two Judges of the Eastern Caribbean Supreme Court to be resident in the BVI (paragraph 17).

26. In 1993 a review of the Constitution of the BVI was carried out by three Constitutional Commissioners. Their terms of reference were: "To carry out a review of the Constitution of the British Virgin Islands in response to the Resolution of the Legislative Council of the British Virgin Islands of 27 November 1992 and, in furtherance of Her Majesty's Government's policies, to ensure the continued advance and good government of the British Virgin Islands." The Commissioners' report was published in April 1994. A copy of it is being transmitted to the Committee's Secretariat together with the present report.

27. Among the Commissioner's recommendations was that the Constitution of the BVI should include an enforceable Bill of Rights; and draft provisions for that purpose were annexed to their report. This proposal was among those that were considered when the Commissioners' report was debated in the Legislative Council in June 1996. The Legislative Council gave its general support to the proposal, though many Members registered the view that "great care must be taken" in determining the contents of any such Bill of Rights.

28. The Commissioners' report was accepted by the United Kingdom and BVI Governments and action to implement its recommendations was put in train as soon as possible. Most of the recommendations addressed to the United Kingdom Government will be implemented through the introduction of a new Constitution for the BVI; and the drafting of this is now in progress. Some of the recommendations addressed to the BVI Government have already been implemented and the BVI Government is preparing to implement the others.

II. Information relating to substantive articles of Covenant

29. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of the BVI **S** or, where a more up-to-date or fuller account was given in the

course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

30. In Chapter 3 of the report of the Constitutional Commissioners (see paragraph 26 above), the Commissioners discussed the question of full independence for the BVI. They reported that, although a few persons did not favour independence at all, at any time, many saw it as a natural development at some unspecified time in the future. The report referred to a resolution of the Legislative Council, adopted many years ago but still applicable, to the effect that independence should be sought only if a majority had voted in favour of it in a referendum. The Commissioners themselves regarded this as the most satisfactory procedure for determining the issue, and they recommended that the costs, obligations and liabilities consequent upon independence should be assessed by the BVI Government and the findings made public. Action on this is still pending.

31. In the Legislative Council debate in June 1996 (see paragraph 27 above), most of the Members who spoke recognised independence as a legitimate goal for the BVI but none of them advocated an immediate move towards it. Some of them suggested that an alternative option would be full internal self-government, with the United Kingdom Government retaining responsibility for defence.

32. A separate recommendation made by the Constitutional Commissioners was that the BVI Government should consider establishing machinery for holding referendums on constitutional change. Independently of this, a draft National Referendum Bill was prepared in 1995 with the stated purpose of providing a legal framework for dealing with a situation where a special issue has arisen for decision which the Government considers to be of such national importance as to require to be put to the whole electorate. No action has so far been taken on this draft Bill.

Article 2

33. The recommendation of the Constitutional Commissioners that an enforceable Bill of Rights should be included in the Constitution of the BVI (see paragraph 27 above), is, of course, directly relevant to Article 2 of the Covenant, since the proposed Bill of Rights will include an enforceable prohibition of discrimination of the kind referred to in Article 2.1 and will provide a constitutional guarantee of effective remedies for any infringement of the rights and freedoms set out in the Covenant, thus further satisfying Article 2.3.

34. Specifically as regards discrimination on the grounds of race, colour, etc., the Committee is referred to the United Kingdom's 14th periodic report in respect of the BVI under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (paragraphs 205-224 of CERD/C/299/Add.9). In pursuance of the BVI Government's decision, noted in paragraph 213 of that report, to introduce legislation along the lines of the model draft law provided by the United Kingdom Government (itself modelled on the United Kingdom's own Race Relations Act 1976, as amended), a Bill for an Anti-Discrimination Act was drafted in 1998. It is expected that this will be introduced in the Legislative Council in the course of 1999.

35. The Constitutional Commissioners' report (see paragraph 26 above) included, in its Chapter 8, a discussion of various problems or concerns in connection with "Nationality and Belonger Status". In the light of this, a committee (the Committee to Re-define Belonger Status)

was established by the Executive Council in May 1997; it reported in September 1997. One of the matters which that committee considered was the effect of Section 2(2) of the present Constitution of the BVI which automatically confers Belonger status on a woman who marries a male Belonger but not on a man who marries a female Belonger **S** though such a man can apply for Belonger status without any qualifying period. The committee accepted that this was discriminatory and agreed that the discrimination ought to be eliminated.

36. The Belonger Status Committee also considered the particular problem of "marriages of convenience", which usually involve a male Belonger marrying a female non-Belonger for financial reward so as to enable her to acquire Belonger status. The recommendation of the Belonger Status Committee was that marriage should no longer result in the automatic acquisition of Belonger status and that the non-Belonger spouse, irrespective of sex, should have to satisfy a qualifying period of at least five years ordinary residence in the BVI before becoming eligible to apply for Belonger status. However, this eligibility should not be adversely affected by the subsequent divorce or separation of the spouses and, once Belonger status had been acquired, it, too, should not be lost by reason only of such divorce or separation.

37. The recommendations of the Belonger Status Committee were accepted by the BVI Government and were communicated by that Government to the United Kingdom Government in October 1998 with a view to their being reflected in the new Constitution that is being drafted (see paragraph 28 above).

38. With particular reference to Article 2.3 of the Covenant, it is to be noted that, in addition to the traditional legal remedies, civil or criminal, that are available in the BVI to protect the rights and freedoms of all persons, the remedy of judicial review has become of increasing importance in the BVI, as elsewhere, in recent years. A workshop on administrative law and access to justice, organised by the Commonwealth Secretariat, was held in the BVI in 1997 at the request of the BVI Government and was attended by, among others, judges, Ministers and Government officials. It should also be noted, in the context of Article 2.3, that one of the recommendations of the Constitutional Commissioners was that provision should be made for an Ombudsman and for enforcing his decisions.

Article 3

39. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was extended to the BVI in 1986. The United Kingdom's 3rd periodic report in respect of the BVI under that Convention was submitted in January 1999 and was examined by the Committee on the Elimination of Discrimination against Women in June 1999.

40. Attention is drawn to the proposal, discussed more fully in paragraphs 35 and 36 above, to remove the discrimination between men and women, inherent in Section 2(2) of the present Constitution of the BVI, in connection with the acquisition of Belonger status on marriage.

41. In 1993, a Law Reform Committee was appointed by the Chief Minister's Office to identify the laws of the BVI which particularly affect women and also those areas particularly affecting women in which new legislation was needed, and to recommend reforms. This Committee reported in 1994. Among the topics which its report considered were domestic violence, sexual harassment, equal pay and maintenance. A measure of protection against domestic violence is now provided for by the Domestic Violence (Summary Proceedings) Act 1996 which, as its name indicates, enables relief to be sought in summary court proceedings in cases of domestic violence and in related matters. The law relating to sexual harassment and to equal pay is

currently contained in the Labour Code, and this is being revised by a new Labour Code Bill which received its first reading in the legislature in September 1998. The right to maintenance is now regulated by the Matrimonial Proceedings and Property Act 1995.

42. In 1995 two women were elected to the Legislative Council out of a total of 13 elected members. In addition, women constitute the majority (approximately 53 per cent) of the holders of high office in the public service. They include the Attorney General; two out of the five Permanent Secretaries, two out of the three Deputy Secretaries and five out of the seven Assistant Secretaries; the Magistrate; the Chief Auditor; the Registrar of the Supreme Court; the Deputy Director, Financial Services; the Chief Personnel Officer; the Inspector of Banks and Trusts; the Registrar of Companies; the Accountant General; two out of the eight Medical Specialists; the Assistant Financial Secretary; all fourteen Primary School Principals; the Hospital Administrator; one out of the three Senior Crown Counsel; the Assistant Director of Health; the Chief Social Development Officer; the Comptroller of Customs; the Chief Training Officer; the Manager of the Drug Rehabilitation Centre; the Clerk to the Legislative Council; and the Supervisor of Elections.

Article 6

43. During the examination of the United Kingdom's 3rd periodic report in respect of the BVI under the Covenant the Committee was informed that an Order in Council had been prepared which would abolish the death penalty for murder in all the United Kingdom's Caribbean Overseas Territories, substituting a sentence of life imprisonment. This Order in Council (the Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991) was duly made and came into force on 10 May 1991. Formally, this still left the death penalty available, in the BVI, for treason and certain kinds of piracy. But it ceased to be even nominally available for treason after the enactment of the Criminal Code of 1997 and, though it is still nominally available for piracy, in practice it is no longer carried out for any offence.

Article 7

44. As previously reported to the Committee, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to the BVI with effect from 7 January 1989. The United Kingdom's initial report under the Convention in respect of the BVI (CAT/C/9/Add.10, and see also CAT/C/9/Add.14) was examined by the Committee Against Torture in November 1992. The second periodic report (CAT/C/25/Add.6) was examined by November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998.

Article 10

45. The Committee will recall that the 3rd periodic report under the Covenant in respect of the BVI stated that, following an inspection by the Chief Inspector of Prisons for England and Wales, it had been recommended that a new prison be built in the BVI. Approval was indeed subsequently given for the construction of the new prison and the Chief Minister formally declared it open on 16 May 1997. It provides adequate accommodation for 120 prisoners and is fitted with modern conveniences and equipment. As of 13 October 1998, the prison population was 49. One of the reasons for its construction was, of course, to facilitate the treatment of prisoners in accordance with the applicable international standards (including the requirements of Article 10 of the Covenant). With this objective, the previous Prison Rules have been updated. New Prison Rules were made on 13 May 1999 and brought into force on the same day.

46. The construction of the new prison in the BVI was part of a major programme of prison reform for all the United Kingdom's Caribbean Overseas Territories. A prison governor from the United Kingdom (Mr Christopher Gibbard) was appointed in 1993 to be Prison Reform Co-ordinator for all those territories. Mr Gibbard is responsible for advising on the administration and operation of their prisons, assisting in all management aspects of moves from existing prisons, staff training and support for prison superintendents. He visits each of the prisons every 6 to 8 weeks and reports on progress to the respective Governors and to the Foreign and Commonwealth Office in London. He organises a mutual support programme which enables staff from each prison to work and meet with colleagues from other Overseas Territories. There is a training officer in each prison and courses are held in which prison officers from all the Territories participate on a regular basis. A two-year middle management course for prison officers, jointly funded by the BVI Government and the United Kingdom Government, was instituted in September 1997.

47. The "Statement of Purpose" for the new prison reads: "The Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and to help them lead law-abiding lives in custody and after release." In conformity with this, the Prison Ordinance and the Prison Rules contain a number of provisions aimed at ensuring that prisoners are treated with humanity and with respect for their dignity as human beings. They all have access to free medical care and free dental care, and a doctor visits the prison on a regular basis, currently once a week. There is also a psychiatric nurse on the prison staff. Various religious denominations hold church services for prisoners on Saturday and Sunday of each week. During the week (i.e. from Monday to Friday of each week) there are classes for prisoners in English, Mathematics, Social Studies and Vocational Skills. Segregation between remand prisoners and convicted prisoners and between adult and juvenile prisoners is achieved by housing them in separate cells, though within the same compound.

48. The Prisons Ordinance provides for the establishment of a Visiting Committee whose members are required to pay frequent visits to the prison, to hear any complaints by prisoners and to report to the Governor any matters which they consider it expedient for him to be aware of. The Visiting Committee, which is in fact very active, currently consists of a chairman, who is a lay Justice of the Peace, a lawyer (who is a human rights activist), and three other members who are drawn from the local business community.

Article 14

49. Since the Committee's examination of the United Kingdom's 3rd periodic report under the Covenant in respect of the BVI, there have been a number of developments relevant, directly or indirectly, to Article 14 of the Covenant. In 1996 a second Judge of the High Court **S** that is to say, a Judge of the Eastern Caribbean Supreme Court **S** was appointed to sit regularly in the BVI so that, as reported in paragraph 25(f) above, there are now two such Judges resident in the BVI. (As explained in the core document for the BVI (see HRI/CORE/1/Add.62, paragraph 17), the High Court which has jurisdiction in the BVI is part of the Eastern Caribbean Supreme Court, whose judges serve not only the BVI but also a number of independent countries in the Eastern Caribbean, as well as some other United Kingdom Overseas Territories in the region.) The availability of this additional High Court Judge has helped to speed up the administration of justice in both civil and criminal matters. So, also, has the introduction by the BVI Government, in September 1994, of an advanced system of court reporting, using Computer Aided Transcript. In 1997, the ordinary criminal laws of the BVI were codified and embodied in a single statute, the Criminal Code 1997. This should have the effect of making the law more accessible to all concerned in the administration of criminal justice **S** the courts, law enforcement officers, legal

practitioners, human rights defenders and, of course, persons who are themselves charged with or accused of criminal offences. In August 1997, the BVI Government established a committee to examine the possibility of introducing a scheme of legal aid. The committee's terms required it to study and report on the various options for such a scheme and to make recommendations as to its coverage, as to the roles of the Government and of the Bar Association, and as to the establishment and administration of an "adequate means" test for eligibility for assistance under the scheme. The committee has now recommended the introduction of such a scheme, and the Executive Council has accepted its recommendation in principle. The details of the scheme are currently being worked out.

Article 17

50. The Bridgetown Plan of Action for Drug Control Co-operation and Co-ordination in the Caribbean, which was agreed at a meeting sponsored by the UNDCP in May 1996 and re-affirmed at a meeting in the Dominican Republic in December 1997, calls upon Caribbean countries and territories to "ensure that there are adequate powers in domestic laws to enable effective investigations, prosecution and asset forfeiture in all serious crimes, including drug-related crimes and money-laundering. These include, subject to appropriate safeguards, controlled delivery, undercover operations and telecommunications interception and electronic surveillance". Provisions conferring such powers in the law of the BVI are now to be found in legislation such as the Drug Trafficking Offences Act 1992, the Proceeds of Criminal Conduct Act 1997 and the Criminal Justice (International Co-operation) Act 1993.

Article 22

51. The trade unions which are currently registered under the BVI's Trade Unions Act are the British Virgin Islands Teachers Unions, the British Virgin Islands Electricity Workers Union, the Daily Rated Workers Association and the Performing Arts Union. There are also public service staff organisations such as the BVI Nurses Association, the Fire Services Association and the Civil Service Association. Staff associations are not required to register as trade unions; but they may choose to do so, in which case they would get the same legal protection as trade unions for their activities as such.

Article 23

52. In relation to this article of the Covenant, the Committee's attention is drawn to the enactment of the Domestic Violence (Summary Proceedings) Act 1996 and the Matrimonial Proceedings and Property Act 1995, as reported in paragraph 41 above.

Article 24

53. The Age of Majority Act 1994 reduced the age of majority from 21 years to 18 years.

54. The Convention on the Rights of the Child was extended to the BVI on 7 September 1994. The United Kingdom's initial report in respect of the BVI under that Convention was submitted to the Committee on the Rights of the Child in March 1999.

55. The Committee to Re-define Belonger Status (see paragraph 35 above) considered the status of illegitimate children born in the BVI. Under the relevant law regulating nationality (the British Nationality Act 1981 of the United Kingdom), an illegitimate child takes his or her nationality from the mother. If the mother is not herself a British citizen or a British Dependent Territories citizen, the child will not, at birth, acquire such citizenship and, under the rules regulating Belonger status, it will therefore, as a general rule, not automatically have Belonger status in BVI law. (But it will have Belonger status if, as in the majority of cases, the mother is a Commonwealth citizen in some other way. Moreover, it can at any time be registered as a British Dependent Territories citizen, and in practice the majority of such children are so registered.) After considering divergent views on this matter, the Committee recommended that the rules regulating Belonger status should be modified so that any child born in the BVI would acquire Belonger status at birth if **either** the father **or** the mother was then a British Dependent Territories citizen by virtue of a connection with the BVI (and therefore had Belonger status) or was "settled" in the BVI (and therefore had Resident status). As stated in paragraph 37 above, the recommendations of the Belonger Status Committee, including this one, were accepted by the BVI Government and have been forwarded to the United Kingdom Government with a view to their being reflected in the new BVI Constitution which is now being prepared.

56. In relation to the protection of children also, attention is again drawn to the enactment of the Domestic Violence (Summary Proceedings) Act 1996.

Article 25

57. One of the recommendations made by the Constitutional Commissioners (see paragraph 28 above) was that the Elections Act should be amended to provide for the election "at large" (i.e. by a single territory-wide electoral district) of four additional members of the Legislative Council. The Constitutional Commissioners considered that such a change would "have a moderating impact on the parochial nature of representational politics" and that "those members elected at large will bring to bear a wider spectrum of ideas in Parliamentary debates, better represent the diverse views of the populace and demonstrate a greater commitment to the national interest as a whole". This recommendation has already been implemented **S** it is in fact reflected in paragraph 6 of the core document for the BVI **S** and the new arrangements were put into practice in the general election which took place in February 1995. Though the recommendation had initially been controversial, the new arrangements were then widely regarded as a success.

ANNEX C S CAYMAN ISLANDS

I. General information

58. The Committee is referred to the core document ("the country profile") in respect of the Cayman Islands which is contained in Annex IV to HRI/CORE/1/Add.62 (pp. 31-37). Save as is indicated in the following paragraphs of this report, the position as regards the matters covered by that core document remain substantially as described in it. The most up-to-date estimate of the population of the Cayman Islands (as in 1997) is 36,200, the majority of whom live in Grand Cayman, with some 1,600 in Cayman Brac and some 130 in Little Cayman.

II. Information relating to substantive articles of Covenant

59. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of the Cayman Islands **S** or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

60. As is explained in the core document, and as is provided by the Elections Law, general elections to the Cayman Islands Legislative Assembly are required to be held at intervals of no more than four years: the two most recent general elections took place in November 1992 and November 1996. At neither of these elections was the question of the constitutional relationship of the Cayman Islands to the United Kingdom brought up as an issue nor has it been raised in recent years in the Assembly. Indeed, the apparent present consensus of the population of the Cayman Islands is that the Islands should remain a British Overseas Territory. But the United Kingdom Government has consistently made clear that, if there were ever to be a general desire for the Cayman Islands to proceed to full independence, the United Kingdom Government would not stand in its way.

61. As regards the internal Constitution of the Cayman Islands and with specific reference to paragraphs 23 and 24 of the core document (see paragraph 58 above), it can be reported that the introduction of an enforceable Bill of Rights and the elaboration of legislation providing for the functions, jurisdiction and power of a Complaints Commissioner (Ombudsman) remain under active consideration, but no firm decisions have yet been reached.

Article 2

62. With specific reference to discrimination on grounds of race, etc, the Committee's attention is drawn to the United Kingdom's 14th period report in respect of the Cayman Islands under the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) (paragraphs 225-244 of CERD/C/299/Add.9). In general, the Cayman Islands continues to be a racially harmonious and fully integrated society. In the particular field of employment, Cayman Islands law has for some years expressly prohibited discrimination on the grounds of race, colour, creed, sex, age or political beliefs, and any breach of that prohibition (currently contained in the Labour Law 1987) could give rise to either civil or criminal proceedings for redress. In practice, the Director of Labour has, to date, received only a few complaints about discrimination and has been able to resolve them informally and amicably between the parties; in some cases, where the complainants had actually been dismissed, the parties themselves, through their lawyers, directly negotiated a financial settlement. It should be mentioned, however, that the Immigration Law 1992 does differentiate, in relation to employment, between persons with "Caymanian status" (who are subject to no restriction on their right to work) and persons who do not have that status (who, in general, may not carry on any gainful occupation in the Cayman Islands except under the authority of a work permit). But this distinction between Caymanians and non-Caymanians is of course a quasi-nationality distinction and has nothing to do with the race, colour, ethnic origin, etc. of those concerned. Applications for work permits are considered with reference to such factors as the character, reputation, health and qualifications of applicants, the need of the community for the

skills which a particular applicant can provide and the availability of Caymanians with comparable skills. Again, race, colour, ethnic origin, etc. are not relevant factors. Persons who are married to Caymanians or are descended from Caymanians but who are not themselves Caymanians are given preferential treatment in the grant of work permits.

Article 3

63. It continues to be the case, both in law and in practice, that no differentiation is made between men and women as regards their enjoyment of the rights set out in the Covenant. This is subject to the technical qualification that the requirement, under the Immigration Law 1992, that an applicant for Caymanian status must intend to establish his or her domicile in the Cayman Islands is dispensed with in the case of a married woman who lives apart from her husband but whose domicile (in the legal sense) has to remain that of her husband. In substance, of course, this qualification operates as the removal of a disability which would otherwise affect women only.

64. Women are in fact represented in all sectors of society and often in positions of high responsibility. There are currently three women members of the Legislative Assembly, one of whom is the Minister responsible for Community Affairs, Sports, Women, Youth and Culture. Of the 2,319 members of the public service (civil servants), 1,315 are women and 38 of these hold senior management positions (representing 34 per cent of the total number of senior management positions in the service). The average salary of women civil servants is $31,763.48 per annum, compared with $35,336.33 per annum for men civil servants. The total work force of the Cayman Islands in October 1997 was estimated to comprise 10,420 men and 10,305 women. The Cayman Islands have no legislation on equal pay, but it is not uncommon that, in families where both spouses work, the woman is the higher earner. In 1997, there were 2,739 girls and 2,669 boys in the primary and secondary schools.

Article 6

65. During the examination of the United Kingdom's 3rd periodic report in respect of the Cayman Islands under the Covenant the Committee was informed that an Order in Council had been prepared which would abolish the death penalty for murder in all the United Kingdom's Caribbean Overseas Territories, including the Cayman Islands, substituting a sentence of life imprisonment. This Order in Council (the Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991) was duly made and came into force on 10 May 1991. Formally, this still left the death penalty available, in the Cayman Islands, for treason and certain kinds of piracy. But in practice the death penalty is no longer carried out for any offence.

Article 7

66. As previously reported to the Committee, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to the Cayman Islands with effect from 7 January 1989. The United Kingdom's initial report under the Convention in respect of the Cayman Islands (CAT/C/9/Add.10, and see also CAT/C/9/Add.14) was examined by the Committee Against Torture in November 1992. The second periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998. The legislation to amend the Prison Law so as to abolish the power of a court to order corporal punishment for certain offences against prison discipline, which was referred to in paragraph 192 of that 3rd report, was duly enacted in late 1998.

Article 10

67. The Committee's attention is drawn to paragraph 190 of the United Kingdom's 3rd periodic report in respect of the Cayman Islands under the Convention against Torture, etc. (see paragraph 66 above), which describes the review of the Cayman Islands prison system that was recently carried out by Judge Sir Stephen Tumim (formerly Chief Inspector of Prisons for England and Wales) and which details some of the reforms already implemented in the light of that review. As also noted in that paragraph, a revision of the Prison Rules is currently in progress.

68. There is a single prison for the Cayman Islands, situated at Northward on Grand Cayman. This provides accommodation for all prisoners in the Islands. As at the end of 1997, the daily average prison population in Northward stood at 220, of whom 17 were women. Women prisoners are strictly segregated from men, and are under the direct supervision of female prison officers. Convicted adult prisoners and those on remand are accommodated separately but, because of the size of the prison and the limits on staff resources, there has to be some mixing during the day **S** though only at mealtimes and during outside social and recreational activities. Juvenile prisoners on remand are usually kept at the West Bay Police station "lock-up", where officers from the Juvenile Bureau of the Royal Cayman Islands Police are stationed, and they are there generally kept separate from adult prisoners. But when it is necessary for a juvenile to be remanded in custody for a long time, he or she has to be transferred to the prison, whose size and other limitations make it impracticable to achieve complete segregation from adult prisoners. In practice, it is rare to have more than one such juvenile in the prison at any one time.

69. Both remand and convicted prisoners are given work and training in such subjects as tailoring, automechanics and bodywork, woodwork, ceramics and horticulture. Convicted prisoners are required to work: remand prisoners are not required to work but may choose to do so. Prisoners are also allowed to work outside the prison on community projects and for charitable organisations. In 1997, the most regular such work was road cleaning (one day per week) but prisoners' outside work also included assisting the Agricultural Society to prepare for the Agricultural Show and providing various forms of assistance to such public or charitable organisations as the "Pirates Week" Committees of East End, Bodden Town and Savannah, the Cayman Islands National Trust, the Pines Retirement Home, the Public Works Department, the International College of the Cayman Islands and the Red Cross. Young offenders are given the opportunity for studying and for participation in self-help anti-drug groups.

70. The Director of Prisons is empowered, in his discretion, to grant prisoners up to five days pre-discharge leave. In general, the prison service has a positive policy of encouraging rehabilitation through education and training. In 1997 over 75 inmates voluntarily participated in courses leading up to GSCE "O-level" examinations and in other courses. The subjects offered included English Language, Mathematics, Social Studies, Behaviour Management Skills, Drama, Electronics, Introduction to Computers, Pottery and Tailoring. There are also classes in social skills and individual counselling for inmates with behavioural problems. An educational building which was being constructed in the prison has now been completed but, because of an unexpected increase in the prison population which led to overcrowding, it has had to be put to temporary use to accommodate the overflow. However, plans have been drawn up **S** and, it is hoped, will be implemented during the course of 1999 **S** to alleviate the overcrowding in other ways.

Articles 12 and 13

71. There are no restrictions on the right of persons with Caymanian status to enter the Cayman Islands or on the liberty of movement and freedom to choose their residence of persons

lawfully present in the Islands. Nor, except in the case of persons under arrest or subject to the order of a court in connection with criminal proceedings, are there any restrictions on the freedom of any person to leave the Islands.

72. The position as regards deportation from the Cayman Islands, both in the case of persons with Caymanian status and in other cases, is now regulated by the Immigration Law. Under that Law, no person with Caymanian status may be deported. However, if such a person acquired that status by grant from the Immigration Board (as distinct from by birth or by descent from a person with Caymanian status) and if he is convicted by a court of a criminal offence for which he is sentenced to an immediate term of imprisonment for 12 months or more (other than for non-payment of a fine) or an offence which, in the court's opinion, was facilitated by the offender's Caymanian status, the court may recommend to the Immigration Board that the status be forfeited. If the Board acts on that recommendation, the offender will then lose the immunity from deportation which he previously enjoyed. The Law also empowers the Immigration Board to grant non-Caymanians the right to reside permanently in the Islands; and such a person, too, cannot be deported unless the Board, in its discretion, deprives him of that right, which it may do only in certain specified circumstances. These are that the person concerned has been sentenced to imprisonment for a term of at least one year, or that he has been ordinarily resident outside the Islands for a continuous period of one year, or that the grant of permanent residence was based on false information, or that he has become destitute or that he has engaged in subversive activity.

73. Under the Immigration Law, deportation orders may be made only by the Governor and they may be so made only in accordance with that Law. The law prescribes certain classes of persons for whom deportation proceedings may be instituted only by or with the authority of the Attorney General. These include:

(a) A convicted and deportable person;

(b) An undesirable person;

(c) A destitute person;

(d) A prohibited immigrant who has entered the Islands contrary to the Law;

(e) A person whose permission to enter and remain or reside in the Islands has expired or has been revoked and who fails to leave the Islands;

(f) A person in respect of whom the Governor considers it conducive to the public good to make a deportation order.

In any case, and with only three exceptions, the Governor may order a person's deportation only if that person has been given the opportunity of a hearing in a court of law before a magistrate and if the Governor, after considering the magistrate's report, is then satisfied that the order should be made. The three exceptions are these:

(a) Where the person concerned has been convicted of an offence punishable with imprisonment and the court has itself recommended deportation;

(b) Where the person concerned has been convicted of an offence and has been sentenced to at least 6 months imprisonment;

(c) Where the person concerned has been convicted of the offence of remaining or residing illegally in the Islands.

All deportation orders must be reported by the Governor to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom Government.

74. A particular problem that has arisen in recent years in connection with the reception or removal of aliens has been the arrival in the Cayman Islands, in unprecedentedly large numbers, of Cuban migrants trying to reach the United States of America The main influx of these migrants occurred in 1994-1995 and a full account of how the problem was then handled is given in the United Kingdom's 3rd periodic report under the Convention against Torture (in connection with Article 3 of that Convention). There was a further, but smaller, influx of Cuban migrants shortly after those particular circumstances but on that occasion the problem was dealt with by the Cubans being given, at their request, assistance (in the form of boat repairs, food and other necessities) to enable them to travel to another destination.

Article 14

75. The Youth Justice Law 1995 has effected a number of changes in the arrangements for the trial and handling of juvenile offenders (or alleged offenders). Though Caymans law in general (i.e. for the purposes of civil rights and disabilities) sets the age of majority as 18 years, the Youth Justice Law established a separate regime for criminal proceedings (and their consequences) against persons under the age of 17 years, whom it defines as "young persons". There can be no such proceedings against children under the age of 8 years, who cannot be charged with a criminal offence. A child under the age of 12 years can be charged but cannot be convicted of an offence unless it is proved that, at the relevant time, he had the capacity to know that he ought not to do the act (or make the omission) in question. In general, all proceedings against a young person must now be tried in the Youth Court. This is a court of summary jurisdiction which is constituted either by a magistrate sitting alone or by a magistrate sitting with two justices of the peace (at least one of whom must be of the opposite sex to the magistrate) or by three justices of the peace (at least one of whom must be a woman). However, in certain circumstances a young person will (or may) be dealt with in another curt. First, if he is charged jointly with an adult, he will be dealt with in the same court as the adult. Second, if he is charged with an offence which is ordinarily triable either in the Summary Court or in the Grand Court and he himself, having been brought before the Youth Court, elects there to be tried in the Grand Court, he will be tried in the Grand Court. And he will always be tried in the Grand Court if he is charged with an indictable offence. In dealing with young persons who appear before them, both the Summary Court and the Grand Court of course have more extensive sentencing powers than the Youth Court, but they are subject to the same restrictions as the Youth Court (see paragraph 76 below) on their powers to impose custodial sentences on young persons.

76. The law imposes certain restrictions of the imposition of a custodial sentence on a young person who has been convicted of a criminal offence. In terms of procedure, such a sentence may be imposed only if the young person is legally represented; or if he has applied for legal aid under the Poor Persons (Legal Aid) Law and the application was refused on the grounds that he had sufficient means; of if, having been informed of his right to apply for legal aid and having been given the opportunity to do so, he has refused or failed to do so. In terms of substance, the young person must qualify for a custodial sentence either because he has a history of failure to respond to non-custodial sentences or because the court considers that only a custodial sentence would adequately protect the public from serious harm or because the court considers that his offence was so serious that a non-custodial sentence would not be justified. Among the various kinds of orders

which a court may make on convicting a young person is a Youth Rehabilitation Order, under which he is required to attend a rehabilitation school specified in the Order. The Order may require his detention at the school for a given period. A court dealing with a young person has the power to direct that certain detail of the case should not be published.

Article 17

77. Though, with the increasing use of computers, there is a growing recognition of the need for legislation to regulate the use of privately held records, the Cayman Islands still have no law on data protection as such. The Cayman Islands Government's own records are currently held in a central computer system as well as in hard copy in the relevant Departments. These records comprise:

(a) immigration records;

(b) Records of Government employees;

(c) A register of driving and vehicle licences;

(d) The electoral roll, as compiled every four years;

(e) Registers of births, deaths and marriages;

(f) Medical records (only limited information kept on computer);

(g) Land Registry records.

There is general public access, on payment of the prescribed fees, to the Land Registry records and to the registers of births, deaths and marriages and there is limited access to the electoral roll for certain periods prior to general elections. In addition, the Public Recorder Law creates a right for members of the public to search and make notes of the public records, registers and indexes in a number of public offices. These include the Governor's office, the Public Recorder's office, the courts and the Coroner's office. Subject to the foregoing, Government records are confidential and access is available only to specially authorised persons.

Article 22

78. There continue to be no restrictions on the right of any persons to form and join trade unions or on the proper activities of trade unions, save the requirement that trade unions must be registered with the Registrar of Trade Unions. Currently, the trade unions that are so registered are the Worldwide Seamen's Union, the Officers' Union of International Seamen, the Union of Transport Workers, the Union of International Seamen, the International Maritime Union, the Global Seamen's Union, and the International Maritime Officers and Seamen Union.

Article 24

79. The Convention on the Rights of the Child was extended to the Cayman Islands on 7 September 1994. The United Kingdom's initial report in respect of the Cayman Islands under that Convention was submitted to the Committee on the Rights of the Child in March 1999. The Committee's attention is also drawn to the information given in paragraphs 75 and 76 above concerning recent changes in the procedures and arrangements for dealing with juvenile offenders.

ANNEX D S THE FALKLAND ISLANDS

I. General information

80. The Committee is referred to the core document ("the country profile") in respect of the Falkland Islands contained in Annex V to HRI/CORE/1/Add.62 (pp. 38-51). Save as is indicated below and in the following paragraphs of this report, the position as regards the matters covered by that core document remains substantially as described in it. The most up-to-date estimate of the population of the Falkland Islands (as established by the 1996 census) is 2,221. The per capita income in the year 1995-1996 was estimated to be £12,200 and the gross national product in the same year was estimated to be £50.6 million. These are not official figures but are estimates prepared by Messrs Cooper and Lybrand on the basis of information made available to them in the course of an economic study of the Falkland Islands which was published in August 1997. There are no other significant changes in the statistics set out in paragraph 2 of the core document.

81. The Committee's attention is drawn especially to those parts of the core document which describe the democratic institutions of government in the Falkland Islands (Part II, Section A), the legal system (Part II, Section B), and the general legal framework within which human rights are protected (Part III). In particular, the Committee is referred to paragraphs 43-46 which give an account of the contents and operation of Chapter I of the Constitution of the Falkland Islands (entitled "Protection of Fundamental Rights and Freedoms of the Individual"). As is explained in those paragraphs, the provisions of Chapter I guarantee and protect, in justiciable form, the principal substantive rights set out in the Covenant and enable the courts of the Falkland Islands to grant and enforce effective remedies for any contravention or threatened contravention of those rights.

82. Specifically as regards the democratic institutions of government in the Falkland Islands, the Committee will wish to be informed of the following developments. A Committee of the Legislative Council was established in 1994 to consider a review of the Constitution, and a Constitutional Adviser was appointed, at the expense of the Government of the United Kingdom, to assist them. He visited the Falkland Islands in February and March 1995 and undertook consultations with members of the Legislative Council and with the public. He delivered his report to the members of the Legislative Council in April 1995 and, after considering it, the Legislative Council requested the United Kingdom Government to make a number of changes to the Constitution. The United Kingdom Government agreed to this request and the necessary amendments to the Constitution (made by the Falkland Islands Constitution (Amendment) Order 1997) were brought into force on 1 September 1997. The substance of the principal amendments was as follows:

(a) The rules determining who is a person who belongs to the Falkland Islands (in future to be referred to as a person who "enjoys Falkland Islands status") were changed in two respects:

(i) Commonwealth citizens who are domiciled in the Falkland Islands must now apply for such status (which they are qualified to do once they have been ordinarily resident there for at least 7 years) instead of (as previously) automatically acquiring it after such a period of residence;

(ii) A previous discrimination between the sexes, which disadvantaged the husbands or widowers of persons belonging to the Falkland Islands as

compared with the wives or widows of such persons, has now been removed;

(b) It is now open to the elected members of the Legislative Council to decide that the sittings of the Council shall be presided over by a Speaker elected by themselves instead of (as previously) being presided over by the Governor or a person appointed by him.

(c) The number of elected members of the Legislative Council representing the Camp constituency has been reduced and the number of those representing the Stanley constituency has been increased to reflect recent population changes (and the provisions regulating the quorum in the Council have been adjusted accordingly);

(d) The franchise in elections to the Legislative Council, which was previously conferred on all Commonwealth citizens who had attained 18 years of age and who could satisfy the prescribed residence qualifications, is no longer open to all such persons but only to those who enjoy Falkland Islands status or whose names appeared on the register of electors for a constituency in force on 1 September 1997;

(e) Areas of Government business in the Legislative Council may now be assigned to elected members of the Council instead of (as previously) only to one of the *ex officio* members.

II. Information relating to substantive articles of Covenant

83. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of the Falkland Islands **S** or, where a more up-to-date or fuller account was given in the course of the Committee's consideration of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 2

84. With reference to paragraph 1 of Article 2 of the Covenant, a recent development has been the enactment by the Falkland Islands legislature of the Race Relations Ordinance 1994, which came into force on 17 June 1994. This Ordinance adopts the provisions of the Race Relations Act 1976 of the United Kingdom so as to make them part of the law of the Falkland Islands, but does so with the necessary adaptations and modification and with certain exceptions, mostly of a technical nature. Its effect, therefore, is to prohibit in the Falkland Islands, as in the United Kingdom, acts or practices of racial discrimination if these occur in any of in various specified spheres, such as employment, education and the provision of goods, facilities, services and premises. The prohibition applies whether the person committing the racially discriminatory act, or engaging in the racially discriminatory practice, is a private person or organisation or is a public authority or is the Government itself. The Ordinance of course supplements, and in no way derogates from, the provisions of section 12 of the Constitution of the Falklands Islands which prohibits (and thereby renders invalid) any provision of law that is discriminatory either of itself or in its effect and which also prohibits any discriminatory conduct by any person acting by virtue of any law or in the performance of the functions of any public office or public authority. For the

purposes of section 12, the expression "discriminatory" covers not only racial discrimination but also discrimination by reference to place of origin, political opinions or affiliations, colour, creed or sex. No complaint of any conduct which was alleged to constitute a contravention of the Race Relations Ordinance 1994 or of section 12 of the Constitution has, to date, been received by the authorities in the Falkland Islands.

85. In the particular context of racial discrimination, the Committee is also referred to the United Kingdom's 14th periodic report in respect of the Falkland Islands under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (paragraphs 245-249 of CERD/C/229/Add.9).

Article 3

86. As has been made clear in previous reports, men and women in the Falkland Islands are entirely equal in the enjoyment of all political and civil rights set forth in the Covenant. As noted in paragraph 84 above, section 12 of the Constitution, which prohibits discriminatory laws and discriminatory executive acts, applies to discrimination on grounds of sex as well as on other grounds. The Committee's attention is also drawn to the recent amendment of the Constitution (see paragraph 82 above) which removed a previous discrimination on grounds of sex in the rules governing the acquisition of Falkland Islands status. As regards sex discrimination in other areas (and in particular in the field of employment), the Falkland Islands Government recently decided that it would be desirable for the territory to have legislation dealing specifically with this matter on the lines of the Sex Discrimination Act 1986 of the United Kingdom. A Bill for that purpose was accordingly submitted to the Legislative Council and was enacted, as the Sex Discrimination Act 1998, in November 1998. It is now in force.

87. Women in the Falkland Islands are in fact active in the exercise of their civil and political rights. In conformity with section 12 of the Constitution (and Article 25(a) and (b) of the Covenant), the laws which prescribe the qualifications for voting and for candidature for elected office in the Falkland Islands make no distinction between men and women. At the latest general election to the Legislative Council, which took place in October 1997, three of the eight members elected were women and one of these was subsequently chosen by all the elected members to be one of the elected members of the Executive Council, in which capacity she had also served for two out of the previous three years. (At one point, **all** the elected members of the previous Executive Council had been women.) As regards the access of women to public service (Article 25(c) of the Covenant), there were, as at 31 December 1997 (the latest date for which figures are available: it is not thought that there has been any significant change since then), 631 officers employed by the Falkland Islands Government, of whom 282 were women. Two posts of Director of Department (of the Human Resources Department and of the Department of Mineral Resources) are currently held by women. Between 1 January 1992 and 31 December 1997 the Falkland Islands Government sent 126 public officers for training overseas, and of these 51 were women. The subjects of the courses on which these women officers were sent included management, air traffic control, food and water microbiology, personnel management and radio broadcasting.

88. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was extended to the Falkland Islands in 1986. The United Kingdom's 3rd periodic report in respect of the Falkland Islands under that Convention was submitted in January 1999 and was examined by the Committee on the Elimination of Discrimination against Women in June 1999.

Article 4

89. As is explained in paragraph 52 of the core document, section 14 of the Constitution of the Falkland Islands permits a law to authorise measures to be taken which derogate from certain specified provisions of Chapter I of the Constitution ("Fundamental Rights and Freedoms of the Individual") during a period of public emergency, but such measures may be taken only to the extent that they are reasonably justifiable for dealing with the emergency situation that then exists: whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts. There has so far not been any occasion to invoke this provision, because there has not been a public emergency in the Falkland Islands (corresponding to a public emergency within the meaning of Article 4 of the Covenant) since 1983.

Article 6

90. As appears from previous reports, section 2(1) of the Constitution of the Falklands Islands, which has been in force since April 1985, prohibits any court from imposing the death penalty except for the crime of treason (though no person has in fact ever been convicted in the Falkland Islands of the crime of treason). This position has now been taken further by the adoption, as part of the law of the Falkland Islands, of the provision in the United Kingdom's Crime and Disorder Act 1998 that removes the death penalty for treason in the law of the United Kingdom. Accordingly, the Falkland Islands no longer have the death penalty for any offence.

Article 7

91. As previously reported, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to the Falkland Islands with effect from 7 January 1989. The United Kingdom's initial report under the Convention in respect of the Falkland Islands (CAT//9/Add.10 and see also CAT/C/9/14) was examined by the Committee Against Torture in November 1993. The 2nd periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998.

92. As regards the rules concerning the questioning of persons in custody on suspicion of their having committed criminal offences, see paragraph 94 below (under Article 9 of the Covenant); and as regards certain aspects of the treatment of prisoners, see paragraph 97 below (under Article 10 of the Covenant).

Article 9

93. The guiding provisions of the law of the Falkland Islands relating to the matters dealt with by Article 9 of the Covenant are to be found in section 3 of the Constitution ("Protection of right to personal liberty"). The provisions of that section apply not only to the case of persons suspected of having committed offences but also to the other cases mentioned in the Committee's General Comment 8(16). It is to be noted, however, that, despite the "enabling" exception in section 3(1)(i) of the Constitution, there is in fact no provision in the law of the Falkland Islands authorising any person to be deprived of his liberty by reason of drug addiction or vagrancy or for educational purposes. Nor is there any provision for preventive detention.

94. As regards persons suspected of having committed criminal offences, the provisions of the Constitution are supplemented by the more detailed and comprehensive provision which is made in

the Criminal Justice Ordinance 1989, as amended in 1991 and 1992. Parts VI and VII of the Ordinance (which broadly reflect the corresponding provisions of the Police and Criminal Evidence Act 1984 of the United Kingdom) deal respectively with detention by the police and with the questioning and treatment of persons by the police. In addition, section 701 of the Ordinance (which was inserted by the Criminal Justice (Amendment) Ordinance 1991 and which corresponds to section 76 of the Police and Criminal Evidence Act 1984) requires the court of trial to exclude evidence of a confession made by the accused person if it is alleged **S** and if the allegation is not disproved by the prosecution beyond reasonable doubt **S** that the confession was obtained by oppression. A court could well regard a confession obtained at a time when the accused person was being unlawfully held in custody by the police as having been obtained by oppression. Part V of the Ordinance makes provision, substantially corresponding to the provision made by the Bail Act 1976 of the United Kingdom, for the grant of bail to a person accused of a criminal offence. Under section 81 of the Ordinance, read together with Schedule 3, bail must be granted by a court in the great majority of cases if the accused person, not having been bailed by the police, either is brought before the court in proceedings for the offence or applies to a court for bail in such proceedings. It is very unusual indeed for a court in the Falkland Islands to refuse bail pending trial. There has been no case since, at latest, 1985 where a person has been held in custody for more than 10 weeks before being tried. Most criminal offences are tried within 4 weeks of the commencement of proceedings.

95. The detention of a person on grounds of mental illness is closely regulated by the Mental Health Ordinance 1987, which was brought into force in 1992. Under the Ordinance a "mentally disordered" person (which expression includes a person with mental illness or with a similar disorder or disability of the mind) may be ordered by a tribunal consisting of the Senior Magistrate or two justices of the peace to be confined for care and treatment as a patient in an approved place. Before the tribunal can make such an order (a "reception order"), the person concerned must first be examined by two medical practitioners who must certify that he is indeed mentally disordered; the tribunal must also consult the Chief Medical Officer; and the tribunal must itself be satisfied that the person is a proper subject to be placed under care and treatment in an approved place. (Approved places are places or institutions which are designated as such, for the purposes of the Ordinance, by the Governor in Council. They are under the general management and control of the Chief Medical Officer and are subject to regular independent inspection and reporting.) A reception order remains in force only for one year but may be renewed by the tribunal, for a further year at a time, if the Chief Medical Officer, in a report to it on the patient's mental and bodily condition, certifies that he is still mentally disordered and is a proper subject to remain under care and treatment in an approved place and if the tribunal is itself then satisfied that the order should be renewed. The Ordinance of course contains various provisions requiring the release of a person who is subject to a reception order if he is no longer mentally disordered or if his confinement is no longer necessary. In particular, it provides a procedure whereby, if any person complains to any magistrate or justice of the peace that a person who is not mentally disordered is confined in an approved place against his will, the tribunal must enquire into the case (and must examine the detained person himself and any witnesses called on either side) and, if it finds the complaint to be correct, will order his release. It is also to be remembered that the detention of a person on grounds of mental illness otherwise than strictly as authorised under the Mental Health Ordinance 1987 would be unlawful both at common law and, expressly, under section 3 of the Constitution; and the provisions of the Ordinance do not prejudice any other remedy that might be available in such a case, including the right to apply to the Supreme Court under section 16 of the Constitution for relief against the contravention of section 3.

96. Deprivation of liberty for the purposes of immigration control is authorised, but only in certain limited circumstances, by the Immigration Ordinance 1987, as amended. Under section 5 of the Ordinance an immigration officer or a police officer who has reasonable cause to suspect

that any person is unlawfully present in the Falkland Islands or that he has committed any other offence against the Ordinance may arrest that person without warrant if such an immediate arrest appears to be necessary. The arrested person must then, of course, be brought before a court without delay in accordance with section 3(4) of the Constitution. The court can grant bail but will not ordinarily do so in such a case. A person against whom the Governor has made a deportation order under section 19 of the Ordinance **S** and the person concerned has the right, before such an order is made, to make representations to the Governor which the Governor must take into account **S** may also be kept in prison or in police custody pending his departure if the Governor so directs. But it is in fact not the general practice for the Governor to give such a direction unless it is necessary to do so in the interests of public safety or public order or there is reason to suppose that the person concerned will not comply with the deportation order.

Article 10

97. The following information is drawn to the Committee's attention in order to supplement the information supplied in previous reports in relation to Article 10 of the Covenant:

(a) Prisoners are regularly visited by the Board of Prison Visitors, of which the Senior Magistrate is the Chairman. Each prisoner is interviewed in private and is given the opportunity to make any complaints about his treatment. The prison is regularly visited by Government Medical Officers. Clergy also visit the prison at regular intervals to see prisoners;

(b) The diet of prisoners is monitored by the Government Medical Department. Their meals are cooked in the hospital kitchen and the adequacy of the diet is thus readily controlled. Unconvicted prisoners (i.e. those held in custody pending trial) are permitted, if they wish and at their own expense, to have their own meals brought in and to consume moderate amounts of alcohol with their meals.

(c) Apart from this special privilege for unconvicted prisoners with respect to meals, the difference between the treatment of convicted prisoners and that of unconvicted prisoners is perhaps not as great in the Falkland Islands prison as it may be elsewhere, since even convicted prisoners are, subject to good behaviour, permitted many privileges which prisoners elsewhere would not ordinarily enjoy. For example, all prisoners are permitted to wear suitable clothing of their own and no prisoner is required to wear prison uniform. (Clothing will be provided to a prisoner if he has none.);

(d) Prisoners who are not serving a sentence of imprisonment of more than 12 months are not disqualified merely by reason of their conviction or their status as prisoners from being registered as electors in elections to the Legislative Council. If they are so registered, they are permitted and indeed encouraged to vote in elections. The provisions of the Prison Rules which permitted the corporal punishment of prisoners for certain offences against prison discipline were formally revoked in 1989. In practice, they had not been used for over 30 years.

Article 14

98. There are three aspects of Article 14 of the Covenant on which there is information to be placed before the Committee in supplementation of previous reports:

(a) **Legal assistance (Article 14.3(d))**

The Falkland Islands Government operates a non-statutory Legal Aid Scheme which is administered through the Attorney General's office. Under this Scheme a person automatically qualifies for legal aid (i.e. representation and/or advice) in any civil or criminal case in which he is a party, or in which he may become a party, or which may directly affect his interests, if the case does not fall within one of the categories of cases that are specifically excluded from the Scheme and if his income and capital assets are below the specified limits. (The Scheme also provides for legal advice in respect of certain other legal matters or issues.) The specified limits of income and capital assets have deliberately been set at a level which ensures that the great majority of persons within the Falkland Islands are financially eligible for legal aid: in approximate terms, any person whose gross annual income is less than £15,000 and whose capital (excluding the value of his house) is less than £50,000 will qualify. Though the Scheme is administered through the Attorney General's office, it operates in such a way that an applicant for legal aid does not have to disclose the merits of his case to the Attorney General's office or give any confidential information, though he does have to provide copies of documents which have already been sent to the court. It should be added that it is the practice of the courts in the Falkland Islands, when considering imposing a custodial sentence on a person who has been convicted and who is not legally represented, to inform him that they are considering such a sentence and to advise him to take the opportunity to instruct a lawyer to represent him: they will then adjourn sentence so that he may do that (and may apply for legal aid for that purpose, if appropriate.)

(b) **Provision of an interpreter (Article 14.3(a) and (f))**

The requirements of the Covenant relating to the provision of interpretation for accused persons who may not understand the language in which proceedings are usually conducted are expressly given effect to, in the law of the Falkland Islands, by section 13(2)(b) and (f) of the Constitution. The courts of the Falkland Islands have held that this constitutional right "to have without payment the assistance of an interpreter" must be construed as requiring an **independent** interpreter. While this normally presents no problems, there have been a few cases where it has meant that it was impossible to proceed with a prosecution since the only interpreters available could not strictly be regarded as independent. This necessary abandonment of the proceedings in those cases could in turn be viewed as causing injustice to the victims of the crimes that had been committed. But it is considered that the very great cost of specially bringing interpreters over a distance of several thousand miles cannot be justified except where the offences involved are very serious.

(c) **Compensation for miscarriage of justice (Article 14(6))**

There is at present no provision in the law of the Falkland Islands which confers a right to compensation in the circumstances to which Article 14(6) of the Covenant applies. In fact, no case involving such circumstances is known ever to have arisen in the Falkland Islands. But the Government of the Falkland Islands will give consideration to the enactment of a suitable law at an early opportunity.

Article 17

99. In 1995 the Falkland Islands legislature enacted an Ordinance which adopted, as part of the law of the Falkland Islands, various provisions of the United Kingdom's Data Protection Act 1984. This Ordinance (the Data Protection Ordinance 1995) provides for the methods of keeping data, for its non-disclosure except in certain circumstances, and for the obtaining of information by a person who is being reported on; and it also regulates the types of information that may be recorded. The Ordinance has not yet been brought into force but it is intended that this should take place in the near future.

Article 19

100. A significant recent development with respect to the right to freedom of expression guaranteed by Article 19 of the Covenant **S** and it could be considered also to be relevant to the right to freedom of thought, conscience and religion guaranteed by Article 18 **S** is the abolition of the common law offence of blasphemy (which was limited to attacks on the Christian religion.) This reform was made by the Criminal Law (Amendment) Ordinance 1992 which inserted into the Crimes Ordinance 1989 a new section 40A having that effect. At the same time, section 40 of the Crimes Ordinance 1989, which had previously dealt only with attempts to break up lawful public meetings, was replaced by an expanded provision which also made it a criminal offence for any person

> "... with the intention of disrupting any act of religious worship or causing distress or annoyance to any person attending thereat for the purpose of worship
>
> (i) [to use] abusive or insulting words or behaviour;
>
> (ii) [to display] any writing, sign or other visible representation; or
>
> (iii) [to do] any other thing intended to disrupt any act of religious worship, within the hearing or sight of any person attending at that act of religious worship and so as to be likely to cause him annoyance ...".

101. In conformity with Article 19.3 of the Covenant, the law of the Falkland Islands of course continues to provide various restrictions on the right to freedom of expression which are considered necessary either for respect of the rights or reputations of others or for the protection of national security or of public order or of public health or morals. These restrictions, which are essentially the same as obtain under the law of the United Kingdom, deal with such conduct as incitement to violence or incitement to racial hatred (both of which may constitute criminal offences) or the publication of material which defames others (which may constitute a civil wrong). However, the new section 40A of the Crimes Ordinance 1989 which, as explained in paragraph 100 above, abolished the offence of blasphemy also abolished the common law offence of sedition.

102. A further recent development relevant to Article 19 of the Covenant is an amendment of the law on contempt of court. Recognising that the common law rules previously in force in the Falkland Islands were potentially restrictive of the right to freedom of expression to an extent that might conflict with the relevant international legal norms, the Falkland Islands legislature enacted, in June 1996, a Contempt of Court Ordinance which applied, as part of the law of the territory but with the necessary technical modifications and exceptions, the provisions of the Contempt of Court Act 1981 of the United Kingdom. The latter Act had itself, of course, been enacted to bring the law of the United Kingdom into compliance with a decision of the European Court of Human

Rights given in the context of Article 10 of the European Convention on Human Rights, and the "long title" of the Ordinance made clear that its purpose was "in particular ... to bring the law of contempt into line with Articles 6 and 10 of [the European Convention]". (It should be added that, in practice, no proceedings for contempt of court that might be relevant to this matter have been instituted in the Falkland Islands for many years.)

103. A further measure that is relevant to Article 19 of the Covenant is the Defamation (Amendment) Ordinance 1998 which was enacted on 18 November 1998 and came into force on 1 July 1999. It adopts the changes made in the corresponding law of the United Kingdom by the Defamation Act 1991. The principal effect is to restrict liability for unintentional defamation, a liability which has, in the past, been criticised by some as constituting an unjustifiable fetter on freedom of expression.

Article 22

104. There are no restrictions on the right of persons in the Falkland Islands to form and join trade unions (or other associations) nor on the right of individuals or trade unions to organise and take part in strikes. In fact, because of the small population of the Falkland Islands, there have traditionally been only two active trade unions: the General Employees Union, which claimed to represent both public sector and private sector employees; and the Civil Service Association, which claimed to represent public sector employees only. The former regularly negotiated working conditions on behalf of farm employees with the Sheep Farmers Association and occasionally also on behalf of employees of the Falkland Islands Government. The latter provided assistance to public service employees in a range of matters. These two trade unions recently merged into a single union (the Government Service Employees Union) which now claims to represent all public and private sector employees. ILO Convention No. 87 (Freedom of Association) extends to the Falkland Islands and the requisite reports have been submitted to the relevant supervisory body.

Article 24

105. The Convention on the Rights of the Child was extended to the Falkland Islands on 7 September 1994. The United Kingdom's initial report in respect of the Falkland Islands under that Convention was submitted to the Committee on the Rights of the Child in March 1999. But, for the purposes of this present report, the attention of the Human Rights Committee is drawn to two pieces of legislation which have recently been enacted in the Falkland Islands with a view to reforming, updating and rendering more accessible and effective the law relating to the rights of children as guaranteed by Article 24 of the Covenant and now more fully by the Convention on the Rights of the Child. These two pieces of legislation are the Family Law Reform Ordinance 1994 and the Children Ordinance 1994.

106. The principal purpose of the Family Law Reform Ordinance 1994, which came into force on 17 June 1994, was to reform the law relating to the consequences of birth outside marriage It does this by rendering the legal position of a child born to unmarried parents the same, so far as possible, as the position of a child whose parents are married to each other. The Ordinance does not seek to abolish the status of illegitimacy but it does seek to remove any avoidable discrimination against, or stigma attaching to, children born outside marriage. In pursuance of this objective, section 2 of the Ordinance lays down the general principle that, unless a contrary intention appears, any references in the Ordinance itself or in any future enactments or instruments to a relationship between two persons is to be construed without regard to whether either of them, or any person through whom the relationship is deduced, is or is not legitimate. The Governor is

given power to extend the application of this principle to past enactments also. The Ordinance contains detailed provisions, building on this principle, relating to the inheritance of property on intestacy and the disposition of property *inter vivos* or by will. It also makes provision relating to the procedure for obtaining declarations from the Supreme Court as to a person's parentage or his status (e.g. that he is legitimate or has been legitimated or has been adopted) and it makes further provision with respect to the rights and duties of parents (e.g. as regards the maintenance of their children).

107. The Children Ordinance 1994 came into force on 1 January 1995. Until then the Falkland Islands had no legislation of their own specifically addressing the subject of the welfare and upbringing of children (as distinct from their education, on which, of course, there was specific Falkland Islands legislation). The law on the welfare and upbringing of children was an unsatisfactory, inadequate and confusing patchwork of common law and United Kingdom legislation, some provisions of which had been directly and specifically adopted (with suitable modification where necessary) but most of which had effect by virtue of a general and indirect application to the Falkland Islands (sometimes inappropriately or without the necessary specific modifications) of various statutes that had been enacted in the United Kingdom. The result was that many of the provisions that were in force in the Falkland Islands were out of date or unsuitable to local circumstances. The purpose of the Ordinance was to remedy this situation; in doing so, to remove problems that had previously been encountered arising from conflicting powers in public and private law and from confusion engendered by conflicting jurisdiction in cases involving children; and, generally and most important, to establish a clear, consistent and up-to-date code on the care, welfare and upbringing of children which would at the same time give effect to the relevant obligations of the United Kingdom in respect of the Falkland Islands under the Convention on the Rights of the Child (as well as, of course, under Article 24 of the Covenant).

108. It is not possible, in the compass of this report, to give a full account of the contents of the Children Ordinance 1994. It enunciates certain general principles (see below) which must be applied in cases involving the upbringing, etc. of children; it contains provisions relating to parental responsibility; it empowers the courts (and closely regulates the exercise of that power) to make a wide variety of orders (designated "section 9 orders") with respect to children in family proceedings (e.g. "contact orders", "prohibited steps orders", "residence orders" and "specific issue orders" **S** all these terms are defined in section 2 of the Ordinance); it also empowers the courts to make "care orders" or "supervision orders" where a child is suffering, or is likely to suffer, significant harm because of inadequate parental care or because he is beyond parental control; and it confers various other powers (e.g. to make an "emergency protection order") for the protection of children who are believed to be "at risk". It also contains provisions dealing with child abduction and various miscellaneous and ancillary provisions promoting the general purpose of the Ordinance as described above.

109. The essence of the Ordinance is perhaps encapsulated in section 3 ("Principles on which questions relating to upbringing of children, etc. are to be decided"). Subsection (1) lays down the principle that, in any proceedings where a child's upbringing, etc. is in question, the child's welfare must be the paramount consideration. Subsection (2) requires the court in any such proceedings also to have regard to the general principle that any delay in determining the question is likely to prejudice the child's welfare. Subsections (3) and (4) set out a large number of other factors (e.g. the child's own wishes and feelings, his physical, emotional and educational needs, etc.) to which the court must have regard in deciding whether to make, vary or discharge a contested "section 9 order" or a "care order" or a "supervision order". Finally, subsection (5) provides that, where a court is considering making one or more orders under the Ordinance, it shall not make that order or any other orders unless it considers that doing so would be better for the child than making no order at all.

Article 25

110. Attention is drawn to the amendments, made in 1997 and reported in paragraph 82 above, to the provisions of the Constitution of the Falkland Islands that relate to the composition and procedural arrangements of the Legislative Council of the territory. It should be added here that one of those amendments concerned the grounds upon which a person may be disqualified from being elected as a member of the Legislative Council. Under the relevant provision of the Constitution as now amended, a person is so disqualified if, at the date of the election, he is under a sentence of imprisonment for at least 12 months imposed on him by a court in any part of the Commonwealth or has at any time in the previous five years been under such a sentence. Before this amendment was made, the disqualification applied only if the person concerned was actually under such a sentence at the appropriate date.

ANNEX E S GIBRALTAR

I. General information

111. The Committee is referred to the core document (the "country profile") in respect of Gibraltar which is contained in Annex II to HRI/CORE/1/Add.62 (pp. 52-63). Save as is indicated in the following paragraphs of this Annex, the position as regards the matters covered by that core document remains substantially as there described. The most up-to-date estimate (as at the end of 1996) of the population of Gibraltar is 27,086.

II. Information relating to substantive articles of Covenant

112. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of Gibraltar **S** or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

113. In recent years the right of self-determination has become a central theme for political parties in Gibraltar. Following elections in May 1996, a new Government, formed by the Gibraltar Social Democrats, took office in Gibraltar. This Government ("the Gibraltar Government") has pressed Gibraltar's case for self-determination and in particular has done so in appropriate United Nations fora such as the Fourth Committee of the General Assembly and the "Committee of 24". The Gibraltar Government has said that it intends to put forward proposals for changes to Gibraltar's constitutional arrangements. At the Gibraltar Government's request, in 1998 the United Kingdom Government held exploratory technical discussions with the Gibraltar Government on constitutional reform. The Gibraltar Government has not yet made a formal proposal for constitutional change but has declared its intention to begin a consultation process on the issue in the Gibraltar House of Assembly.

114. The United Kingdom Government's policy on this matter is clear and long-standing. It supports the right of self-determination, respecting the wishes of the people concerned, but that right must be exercised in accordance with the other rights and principles recognised in the United Nations Charter as well as with other relevant treaty obligations. In the case of Gibraltar the right of self-determination is circumscribed by Article X of the Treaty of Utrecht, 1713, under which Spain would have the right of "first refusal" if the United Kingdom ever wished to relinquish sovereignty over Gibraltar. Full independence for Gibraltar could therefore become a reality only with Spanish consent. The United Kingdom Government is, however, ready to consider other possible changes in Gibraltar's constitutional status, provided that these are realistic and compatible with international obligations which include the Treaty of Utrecht.

Article 2

115. The provisions of the Gibraltar Constitution which give effect to the rights recognised by the Covenant and which provide both effective machinery for their enforcement and remedies for any violation of them are described in Part III (pp. 61-63) of the core document in respect of Gibraltar (see paragraph 111 above). As is there explained, one particular provision of the Constitution (section 14) expressly prohibits any law which is discriminatory either in itself or in its effect or any discriminatory action by public officers or public authorities, and the other relevant provisions of the Constitution provide the necessary machinery to make this prohibition effective. In one respect (i.e. in that it is not limited to discrimination in the enjoyment of the rights recognised by the Covenant) the prohibition extends wider than is strictly required by Article 2 of the Covenant: discrimination in any sphere, whether or not involving fundamental civil or political rights, is prohibited. However, it does not extend to discrimination manifested by persons in their purely private capacity. In the particular context of racial discrimination and in response to views expressed by the Committee on the Elimination of Racial Discrimination, the Gibraltar Government is currently giving consideration to the possibility of introducing legislation specifically aimed at discrimination by private persons or private bodies: see the United Kingdom's 14th report in respect of Gibraltar under the International Convention on the Elimination of All Forms of Racial Discrimination (paragraph 251 of CERD/C/299/Add.9).

Article 3

116. Gibraltar's laws, including (but not limited to) those regulating the qualifications for voting and for candidature for elected office, do not differentiate between the rights enjoyed by men and those enjoyed by women; and all the rights set forth in the Covenant are enjoyed, both in law and in practice, by men and women equally. Women have for many years been active in the organisation and work of Gibraltar's political parties. As far back as 1945, in the first ever elections to the Gibraltar City Council, a woman (Mrs Ellicot) stood for election as a candidate of the Association for the Advancement of Civil Rights and she subsequently became the member of the City Council responsible for postal services, while another woman (Mrs Chiappe) became Education Minister when Gibraltar's first Legislative Council was established in 1964. Other women have since, at various times, held Ministerial offices. The 15 Elected Members of the Gibraltar House of Assembly at present include one woman (Miss Montegriffo) who in fact held several Ministerial portfolios in the previous Gibraltar Government (i.e. from 1988 to 1996) and was the Mayor of the City of Gibraltar. She is currently the "shadow" Minister for Health and Sport. Until recently, the office of Attorney General **S** the Attorney General is one of the two *ex officio* Members of the House of Assembly **S** was also held by a woman. There are over 900 women (approximately 45 per cent of the total) in Gibraltar's civil service, of whom 355 serve in clerical grades (constituting about 70 per cent of all persons in those grades). The Gibraltar

civil service is an equal opportunities employer and many management positions in it are held by women. Women are also prominent in general civil life and have at various times been presidents of the Chamber of Commerce and of trade unions such as the Teachers' Association and the Gibraltar Clerical Association. There is also a Women's Association which acts as a highly influential pressure group in community affairs.

117. In the particular field of employment Gibraltar law (in a new Part VA of the Employment Ordinance) contains provisions which give effect to the principle of equal treatment ("no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status" and to the principle of equal pay for equal work or work of equal value. The principle of equal treatment is expressed to apply to the conditions, including selection criteria, for access to all jobs or posts and all levels of the occupational hierarchy; to access to all types and levels of vocational guidance and training; and to working conditions, including the conditions governing dismissal. The principle of equal pay requires the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration, including the criteria for any job classification system which is used for determining pay. The Ordinance provides that all laws, regulations and administrative provisions which are contrary to the principle of equal treatment or the principle of equal pay, and also all provisions that are contrary to either of those provisions and that are included in collective agreements, individual contracts of employment, internal rules of undertakings or rules governing the independent occupations and professions, are to cease to have effect. There is also provision for complaints or breaches of the principle of equal treatment or the principle of equal pay to be brought before an Industrial Tribunal which has the power, *inter alia*, to award appropriate compensation to successful complainants.

Article 4

118. There has been no public emergency (within the meaning of Article 4 of the Covenant) in Gibraltar during the period covered by this report or, indeed, for some 30 years, and there has consequently been no occasion to make any derogation under Article 4 from any of the obligations imposed by the Covenant.

Article 6

119. The only remaining offence for which the death penalty may be imposed in Gibraltar is treason. No person has been convicted of treason in Gibraltar since 1943.

Article 7

120. As previously reported to the Committee, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to Gibraltar with effect from 7 January 1989. The United Kingdom's initial report under the Convention in respect of Gibraltar (CAT/C/9/Add.10, and see also CAT/C/9/Add.14) was examined by the Committee Against Torture in November 1992. The 2nd periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998. These reports **S** particularly the initial report (the 2nd and 3rd periodic reports add nothing significant) **S** give a full account of the measures in force in Gibraltar, and other relevant circumstances there, which ensure that Article 7 of the Covenant is fully respected.

Article 9

121. For the most part, there are no new developments to report in relation to Article 9 of the Covenant. However, there has been one development in the law relating to the grant of bail pending trial in criminal proceedings, which is the subject matter of the second sentence of Article 9.3. Under the law regulating this matter (the Criminal Procedure Ordinance, originally enacted as a consolidating measure in 1961 but subsequently amended from time to time), and as stated in paragraph 41 of the core document (see paragraph 1 above), it is very rare for bail to be refused. The cases where that happens are essentially those where there is judged to be a serious risk of the accused person absconding or a threat to public security. Where a subordinate court refuses bail, the accused person may apply for bail to the Supreme Court. However, there has previously been no provision for the prosecution to appeal to the Supreme Court against the decision of a subordinate court to grant bail. That position has now been changed, to a limited extent, by the Criminal Procedure (Amendment) Ordinance 1995, which amended the principal Ordinance so as to confer such a right of appeal in cases where the accused person is charged with an offence punishable by imprisonment for 5 years or more and bail has been granted despite prior representations made by the prosecution. The Ordinance imposes stringent conditions on the exercise of this right: these require, *inter alia*, that notice of appeal be given immediately (so that the accused person is not liable to be taken back into custody once he has been released on bail) and that the appeal be prosecuted in the Supreme Court with the least possible delay.

Article 10

122. The custody and treatment of prisoners and the regulation of the prison continue to be governed by the Prison Ordinance 1986 and the Prison Regulations 1987. The responsibility for the prison is now vested in the Minister for Social Affairs, except that responsibility for the security of the prison and for public order within it is retained by the Governor. There is a statutory Prison Board, whose members are appointed by the Governor, which must meet not fewer than 8 times in each 12 months within the precincts of the prison for the purpose of satisfying itself as to the state of the prison premises, the administration of the prison and the treatment of the prisoners; of inquiring into and reporting on any matter which the Governor asks it to inquire into; of directing the attention of the Superintendent of the prison to any matter which calls for his attention; and reporting to the Governor on any abuse which comes to its knowledge or on any matter on which it considers it expedient to report. The members of the Board have the right to enter all parts of the prison and examine the prison records and they may talk to any prisoner in private. The Board must arrange for the prisoners' food to be inspected at frequent intervals by a member of the Board; must hear any complaint or request which a prisoner wishes to make; must visit the prison monthly; and must inquire into any report made to it that a prisoner's mental or physical health is likely to be injured by any conditions of his imprisonment. The Board must make an annual report to the Governor on the prison and its administration, and this should include any advice and suggestions which they consider appropriate. This report is required to be laid before the House of Assembly by the Minister for Social Affairs. In addition, the Chief Justice, a judge of the Supreme Court, the Stipendiary Magistrate and any justice of the peace each have the right to visit the prison and examine its condition and the condition of the prisoners and to enter in the record book any observations on the condition of the prison or on any abuses.

123. No prisoner may be punished for a disciplinary offence unless he has had an opportunity of hearing the charge against him and the evidence and of making his defence. All adjudications must be conducted by the Superintendent himself or, in more serious cases, by the Prison Board. The only permitted punishments are caution, forfeiture of privileges, exclusion from associated work, stoppage of earnings, cellular confinement, forfeiture of remission of sentence and forfeiture of the right to wear one's own clothing. The Regulations prescribe the maximum periods for which these punishments may be awarded (depending on whether they are awarded by the Superintendent or the Board). If the Superintendent orders a prisoner to be put under restraint to prevent him from injuring himself or others or damaging property or creating a disturbance, he must give notice of this as soon as possible to the Prison Board and to the medical officer and must record the fact. No prisoner may be kept under restraint longer than necessary nor longer than 24 hours without a written direction from the Board. No prisoner may be put under restraint, or compelled to work, as a punishment. The Superintendent may order a refractory or violent prisoner to be confined temporarily in a special cell but not as a punishment nor after he has ceased to be violent or refractory. Prison officers are forbidden to use force unnecessarily or, if the use of force does become necessary, to use more than is reasonably necessary.

124. The Prison Ordinance requires male prisoners to be kept entirely separate from female prisoners, and female prisoners to be attended only by female prison officers. It also requires that, so far as possible, prisoners of either sex under the age of 17 years should be kept separate from prisoners over that age and unconvicted prisoners should be kept separate from convicted prisoners.

Article 13

125. It remains the position that, for persons who "belong to Gibraltar" (i.e. those who are Gibraltarians, as defined in the Gibraltarian Status Ordinance), the rights protected by Article 12 of the Covenant are given constitutional force **S** and are thus made enforceable through the courts **S** by the Gibraltar Constitution: see paragraphs 37 and 38 of the core document referred to in paragraph 111 above. But even as regards non-Gibraltarians, Gibraltar law does not in general authorise or permit any interference with the right of any person who is lawfully present in Gibraltar to move freely within Gibraltar, to reside anywhere in Gibraltar and to leave Gibraltar when he chooses. Any such interference could be restrained, and redress for it obtained, by proceeding in the Gibraltar courts.

Article 13

126. Gibraltar law (principally the Immigration Control Ordinance) continues to provide that persons who are not Gibraltarians but who are lawfully present in Gibraltar may, in certain circumstances, have their residence permits cancelled or be declared to be prohibited immigrants, and they may then be deported. In addition, where such a person is convicted of a criminal offence, the court may recommend his deportation. In all such cases there is a right of appeal to the Governor.

Article 14

127. In general, there have been no significant developments relevant to this article, but the Committee's attention is drawn to two recent measures which empower the courts, when a person has been convicted in criminal proceedings, to order the confiscation of property which constitutes

or represents, directly or indirectly, the proceeds of, or the benefit derived from, criminal conduct. The first measure was the Drug Trafficking Offences Ordinance 1995, which gives effect to the United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the second was the Criminal Justice Ordinance 1995, which is concerned with criminal conduct other than drug trafficking. Both measures implement the relevant Directive of the Council of Ministers of the European Union.

Article 17

128. With reference to the right to privacy as set out in this article, it can now be reported that the Gibraltar Government intends to introduce in the near future a Bill on data protection which will regulate the processing and movement of personal data, both computerised and manually stored. It is proposed that, under this legislation, various rights will be conferred on individuals who are "data subjects" **S** e.g. to have access to the data, in certain cases to prevent the processing of personal data where that may cause damage or distress, to prevent certain decisions being made by fully automated processes, and to obtain compensation for damage or distress caused by failure to comply with the legislation **S** and the office of Data Protection Commissioner will be established. The Data Protection Commissioner will administer the legislation and ensure compliance with it, and in particular will establish a system of compulsory notification by "data controllers" of certain information which he will then record in registers that will be accessible to the public.

Article 22

129. ILO Conventions Nos. 87 of 1948, 98 of 1949 and 151 of 178 have all been extended to Gibraltar and the requisite reports have been submitted to the relevant supervisory committee. At present there are 20 registered trade unions/staff associations in Gibraltar, with a membership of 4,680 which comprises about 36 per cent of the total workforce.

Article 24

130. A recent development relating to the protection of children and young persons is the enactment of the Gibraltar Merchant Shipping (Safety, etc.) Ordinance 1993 (passed by the House of Assembly in December 1993 but brought into force more recently). The Ordinance covers a wide range of matters concerning the merchant shipping industry in Gibraltar with a view, *inter alia*, to ensuring compliance with the applicable international obligations in that field. One of the relevant instruments is the ILO Convention No. 7 (Minimum Age (Sea)) of 1920. In conformity with that Convention, section 10 of the Ordinance prohibits the employment of any person under the age of 18 years in any ship registered in Gibraltar. An exception is made for work, approved by the competent Gibraltar authority, on board a school-ship or a training ship and also for employment in respect of which the competent authority certifies that he is satisfied, having due regard to the health and physical condition of the young person concerned and to the prospective and immediate benefit to him of such employment, that it will in fact be beneficial to him. In all such cases the Ordinance requires an annual certificate from a qualified doctor that the young person concerned is fit to be employed in the relevant capacity. These provisions of the 1993 Ordinance supplement, and do not in any way derogate from, Gibraltar's main legislation regulating the employment of children and young persons, the Employment and Training Ordinance. This prohibits the employment of any child (i.e. a person under 15 years old) in any industrial undertaking or the employment of any young person (or woman) at night in any

industrial undertaking or the employment of any female young person (or woman) in underground mining or on similar underground work.

131. The Committee's attention is also drawn to two more recent pieces of legislation, both enacted in 1998, which are relevant both to the rights protected by Article 24 of the Covenant and, to some extent, to those protected by Article 23. The first is the Domestic Violence and Matrimonial Proceedings Ordinance 1998 which gives the courts jurisdiction to grant an injunction excluding one party to a marriage from the matrimonial home where this is necessary in the interests of the safety of the other party or of a child living with that other party. The second is the Maintenance (Amendment) Ordinance 1998 which enables a party to a marriage to make a complaint to the Magistrates' Court for an order protecting either the complainant or a child of the marriage from violence or the threat of violence by the other party to the marriage or for an order prohibiting that other party from entering the matrimonial home. This Ordinance also imposes on a man the duty to provide reasonable maintenance for a woman with whom he has cohabited where he also has a duty in respect of children of the relationship.

ANNEX F S MONTSERRAT

I. General information

132. All aspects of the implementation of the Covenant in Montserrat must at present be viewed in the light of the continuing impact on the island of the successive and devastating eruptions of the Soufriere Volcano, first in 1995 and then in 1996 and again in 1997. One of the results of this disaster has been the reduction of the area of the island that is open to habitation from 103 square kilometres to only about 40 square kilometres. Another has been the reduction of its population by more than two-thirds, i.e. from 10,402 persons just before the eruptions to about 3,200 persons by current estimates; the other former inhabitants have been driven to emigrate to neighbouring islands or to the United Kingdom, the United States or Canada. The seat of Government, formerly in Plymouth (the capital town), has had to be moved to the north of the island. In the aftermath of the final evacuation of Plymouth in April 1996, all Government offices were relocated to such accommodation as was available S in almost all cases, private dwelling-houses. A private dwelling-house even had to be requisitioned for use as the island's prison (see paragraph 142 below). However, work began as soon as possible on the construction of temporary Government Headquarters at a site at Brades in the north of the island. This site is now occupied and all Government departments are now able to function in reasonable proximity to each other. Besides these obvious, major disruptions of public and private life, the widespread damage caused by the eruptions has of course had a number of other consequences that have impinged in various ways on the implementation in Montserrat of the provisions of the Covenant; and these are, as appropriate, drawn to the Committee's attention in the following paragraphs of this report. But it has been, and remains, the firm objective of both the United Kingdom Government and the Montserrat Government to ensure that the rights set forth in the Covenant (and in other applicable human rights instruments) continue to be observed to the fullest extent possible, even in the exceptional conditions which currently obtain.

133. Subject to the foregoing and save as expressly indicated in the following paragraphs of this report, the position as regards the matters discussed in the core document (the "country profile") in respect of Montserrat which is contained in Annex VIII to HRI/CORE/1/Add.62 (pp. 78-84) remains substantially as described in that document. The Committee's attention is drawn especially to those parts of the core document which describe the democratic institutions of government in Montserrat (Part II, Section A), the legal system (Part II, Section C) and the general

legal framework within which human rights are protected (Part III). In particular, the Committee is referred to paragraphs 22 and 23 which summarise Part IV of the Constitution of Montserrat. As is there stated, Part IV contains a fully elaborated set of provisions for the protection of the fundamental rights and freedoms of the individual and for their enforcement through the courts of the territory. Despite the upheaval caused by the volcanic eruptions, these provisions have at all times been scrupulously observed.

II. Information relating to substantive articles of Covenant

134. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report in respect of Montserrat under the Covenant **S** or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

135. There is at present no significant body of opinion in Montserrat in favour of changing the status of the territory or its relationship with the United Kingdom. Nor would such a change be a practicable possibility in present circumstances. If circumstances were to alter and a general desire were to emerge for Montserrat to proceed to full independence, the United Kingdom Government has consistently made clear that, for Montserrat as for its other Overseas Territories, it would not stand in the way of such a move.

136. It is to be added that Montserrat is a full member of both CARICOM (the Caribbean Community, established by the Treaty of Chaguaramas) and the OECS (the Organisation of Eastern Caribbean States).

Article 2

137. With specific reference to discrimination on grounds of race, etc., the Committee's attention is drawn to the United Kingdom's 14th periodic report in respect of Montserrat under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (paragraphs 275-299 of CERD/C/299/Add.9). Work on the draft legislation referred to in paragraph 287 of that report (i.e. legislation modelled on the United Kingdom's Race Relations Act 1976) has been taken forward and the legislation is expected to be considered by the Legislative Council in the near future. Montserrat continues to be a fully integrated and racially harmonious society.

Article 3

138. It continues to be the case that, both in law and in practice, no distinction is drawn between men and women in the enjoyment, in Montserrat, of the civil and political rights set forth in the Covenant. Women have for many years been equally active with men, and equally successful, in all occupations and pursuits, including public administration, business and commerce. In the public service, there are as many women as men holding high posts in the administration.

Specifically, the post of Minister of Education, Health and Community Services is held by a woman; there are three Permanent Secretaries (the most senior officials in Ministries) who are women; and there are six women who are Heads of Department (holding the offices of Director of Education, Director of Development, Postmaster, Director of Tourism, Manager of the local radio system, and Clerk of Council). In the commercial sector also, there are many enterprises which are headed by women or where women are in senior positions.

Article 4

139. Although, as explained in paragraph 22 of the core document (see paragraph 133 above), the Constitution of Montserrat contains a provision permitting certain of the fundamental rights and freedoms which it guarantees to be derogated from (subject to certain conditions) in times of emergency, that provision has never been invoked even during the most acute crises following the volcanic eruptions. But it should be mentioned **S** though this was not a case of the exercise of the power to derogate from the constitutional guarantees **S** that restrictions have from time to time been imposed, in the interests of public safety and public health, on entry into areas considered to be within the reach of pyroclastic flows from the volcano.

Article 6

140. The death penalty for murder was abolished in Montserrat by the Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991, and the death penalty is now available only for the offences of genocide and treason.

Article 7

141. As previously reported, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been extended to Montserrat. This extension took effect on 7 January 1989. The United Kingdom's initial report under the Convention in respect of Montserrat (CAT/C/9/Add.10 and see also CAT/C/9/14) was examined by the Committee Against Torture in November 1992. The 2nd periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998. As was reported to the Committee Against Torture during its examination of the initial report, judicial corporal punishment was abolished in Montserrat as long ago as 1991.

Article 10

142. As mentioned in paragraph 132 above, one of the consequences of the volcanic eruptions was the virtual destruction of Montserrat's capital, Plymouth; and Montserrat thus lost, among other vital buildings, its prison. As a result, largely *ad hoc* arrangements have had to be relied on for the accommodation of prisoners. For some time, this involved the designation of a former dwelling-house as a prison. This building was capable of accommodating up to eight prisoners, but the segregation of male from female prisoners was difficult to arrange and the facilities in that respect were unsatisfactory. The segregation of remand prisoners from convicted prisoners was impossible. Subsequently, the number of remand prisoners rose to more than could be coped with in that building and the prison has now been moved to three recently constructed wooden buildings. These were originally intended as sheltered accommodation for persons with special needs and are far from ideal **S** they are not fully secure **S** but the area around them has been fenced

and prisoners can exercise outside. It is also now possible to provide for the proper segregation of remand prisoners from convicted prisoners and female prisoners from male prisoners. These arrangements are, of course, seen as only temporary, and work is now in hand to construct a new, purpose-built remand centre/prison. This will have eight cells, two of which will be physically separated from the others, thus facilitating segregation where that is required. It is hoped that the new remand centre/prison will be completed by mid-1999.

143. Another problem that has arisen in this area is a difficulty in making provision for the custody of long-term prisoners. Until recently, Montserrat relied on arrangements under which such prisoners were sent to the Turks and Caicos Islands to serve their sentences there. But the prison on Grand Turk cannot take any more prisoners from Montserrat and arrangements have had to be made (and are currently being operated) for long-term prisoners to be transferred from Montserrat to the British Virgin Islands.

Article 12

144. As mentioned in paragraph 139 above, it has from time to time been necessary, in the aftermath of the volcanic eruptions, to place restrictions, in the interests of public health and public safety, on areas within reach of the pyroclastic flows from the volcano. But the rights guaranteed by this article of the Covenant have not otherwise been restricted.

Article 22

145. The right of everyone to freedom of association with others, including the right to form and join trade unions for the protection of his interests, continues to be enjoyed in Montserrat (and is in fact guaranteed by section 61 of the Constitution). Under the long-standing Trade Union Act, any group of persons may form a trade union but they must then register it, within 30 days, with the Registrar of the Supreme Court. A registered trade union, and its members and officers, enjoy legal protection in respect of their peaceful activities in pursuance of legitimate trade union objectives. The trade unions which are currently registered are the Montserrat Allied Workers Union, the Seamen and Waterfront Workers Union, the Montserrat Union of Teachers and the Civil Service Association.

Article 23

146. It is relevant to this article of the Covenant (and also to **Article 24**; see below) to note that, in order to help deal with the problem of domestic violence, the Family (Protection against Domestic Violence) Act 1998 has been enacted. This enables a person threatened with domestic violence by her or his spouse to obtain (depending on the circumstances) a "protection order", which prevents the violent spouse from approaching or harassing the applicant; an "occupation order", which permits the applicant to occupy all or part of any premises; or a "tenancy order", which makes the applicant the sole tenant of premises (i.e. to the exclusion of the violent spouse).

Article 24

147. The Convention on the Rights of the Child was extended to Montserrat on 7 September 1994. The United Kingdom's initial report in respect of Montserrat under that Convention was submitted to the Committee on the Rights of the Child in March 1999.

Article 25

148. Despite the severe disruption to the life of the community that had been caused by the volcanic eruption, it was decided that the elections to the Legislative Council that were due to be held in October 1996 could and should go ahead. An electoral Commission of Inquiry was set up by the Governor to consider how the proper democratic processes could best be carried out in the situation which then obtained and, on the recommendation of this Commission, the decision was taken to maintain the existing seven constituencies even though significant areas of the island had by then had to be evacuated. The elections were duly, and successfully, held.

ANNEX G S PITCAIRN

I. General information

149. The Committee is referred to the core document (the "country profile") in respect of Pitcairn which is contained in Annex IX to HRI/CORE/1/Add.62 (pp. 85-88). Save as is indicated in the following paragraphs of this Annex, the position as regards the matters covered by that core document remains substantially as there described. The current population of Pitcairn (as at December 1998) is 66 (31 males and 35 females). For the year ending 31 March 1998, the income of the Government of Pitcairn was NZ$491,838, while expenditure was NZ$666,799, leaving a deficit of NZ$174,961.

150. It is relevant for the purposes of this report (though perhaps not relating specifically to any particular article of the Covenant) that the legal adviser to the Government of Pitcairn is currently carrying out a review of the laws of Pitcairn. It is hoped that this review will be completed in the near future.

II. Information relating to substantive articles of Covenant

151. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of Pitcairn **S** or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 2

152. The position in relation to Article 2 of the Covenant remains as previously reported. In relation specifically to Article 2.1, Pitcairn is of course included in the dependent territories in respect of which the United Kingdom submits regular reports under the International Convention on the Elimination of All Forms of Racial Discrimination. The latest such report in respect of Pitcairn appeared as Annex I to the United Kingdom's 14th periodic report under that Convention (CERD/C/299/Add.9). It in fact reported that there had been no significant developments, relevant to the Convention, in the period which the report covered; nor have there been any such developments, relevant to Article 2.1 of the Covenant, in the period covered by the present report.

Article 3

153. Again, the position in relation to this article of the Covenant remains substantially as previously reported. Both in law and, for the most part, in practice, men and women in Pitcairn enjoy equal rights and are treated equally, not merely in respect of their enjoyment of the civil and political rights set forth in the Covenant but more generally. As explained in earlier reports, under section 14 of the Pitcairn's Judicature Ordinance, the "statutes of general application" that were in force in England on 1 January 1983 are given the force of law in Pitcairn so far as local circumstances permit and unless excluded or displaced by a locally enacted law. The relevant statutes of the United Kingdom guaranteeing the equal treatment of men and women (in relation, for example, to employment matters) are regarded as such "statutes of general application". They therefore have the force of law in Pitcairn and would be enforceable in the courts of Pitcairn if the need ever arose. Specifically in relation to the enjoyment of civil and political rights, it remains the position that the office of Island Secretary, the third highest on Pitcairn, is currently held by a woman **S** this has been the case for several years **S** and the office of Island Treasurer (which has recently been created, its functions having previously been discharged by the Island Secretary) is also currently held by a woman. For many years women have served as members of the Island Council. A woman is currently the Island police officer. Since 1994, the requirement that men between the ages of 15 and 65 should perform public works has been extended to apply equally to women between those ages. However, it is to be noted that a woman has never been nominated for the post of Island Magistrate. It also appears to be only men who are appointed as elders of the church.

Article 7

154. As previously reported, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to Pitcairn with effect from 7 January 1989. The United Kingdom's initial report in respect of Pitcairn under the Convention (CAT/C/9/Add.10 and see also CAT/C/9/Add.14) was examined by the Committee Against Torture in November 1992. The 2nd periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998. These reports **S** particularly the initial report; the 2nd and 3rd periodic reports added nothing significant **S** gave a full account of the measures in force in Pitcairn, and other relevant circumstances there, which ensure that the provisions of the Convention, and consequently Article 7 of the Covenant, are fully respected there. That account remains applicable.

Article 24

155. The Convention on the Rights of the Child was extended to Pitcairn on 7 September 1994. The United Kingdom's initial report in respect of Pitcairn under that Convention was submitted to the Committee on the Rights of the Child in March 1999.

ANNEX H S ST. HELENA

I. General information

156. The Committee is referred to the core document (the "country profile") in respect of St. Helena which is contained in Annex X to HRI/CORE/1/Add.62 (pp. 89-95). Save as is indicated in the following paragraphs of this Annex, the position as regards the matters covered by

that core document remains substantially as there described but the following statistics should be substituted, as appropriate, for those set out in paragraph 2 of the core document.

Gross domestic product per capita	£2,356 (1994/95) estimated
Gross national product	£10, 526,000 (1994/95) estimated
Rate of inflation	1.2% (May 1998)
Rate of unemployment	18.4% (October 1998)
Literacy rate	
Males	98% (1998 census)
Females	98% (1998 census)
Population	4,913 (1998 census)
Life expectancy	
Males	69.7 years (1988-1997 average)
Females	77.0 years (1988-1997 average)
Infant mortality rate	12.4 per 1,000 live births (5-year moving average, 1993-1997) **S** too few to provide separate steady and reliable rates for each sex)
Birth rate	12.7 per 1,000 population (5-year moving average, 1993-1997)
Death rate	
Males	8.9 per 1,000 population (5-year moving average, 1993-1997)
Females	6.9 per 1,000 population (5-year moving average, 1993-1997)
Percentage of St. Helenian resident population under 15 years of age	
Males	23.1% (1998 census)
Females	19.6% (1998 census)
Percentage of St. Helenian resident population over 65 years of age	
Males	8.7% (1998 census)
Females	14.0% (1998 census)
Percentage of St. Helenian resident population in rural and urban areas	
Rural	60%(1998 census)
Urban (Jamestown and Half-Tree Hollow)	40% (1998 census)
Religions	**Church of England**
Males	82.4%
Females	81.9%
	Jehovah's Witness
Males	4.5%
Females	6.3%
	Baptist
Males	2.5%
Females	2.1%

II. Information relating to substantive articles of Covenant

157. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of St. Helena **S** or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

158. There is at present no significant body of opinion in St. Helena which advocates independence or any similar change in the status of the territory, and the very small size of the territory and of its population, and also its geographical remoteness, would obviously present major obstacles to any such change. However, bearing in mind the right of self-determination recognised in Article 1 of the Covenant, the United Kingdom Government is alert to the need to ensure that the constitutional arrangements for St. Helena remain suitable to the needs and aspirations of its population. It is with this need in mind that, in September 1998, the Governor of St. Helena established a Commission of Enquiry (consisting of a Chairman, four other members and a Secretary) to consider whether there are any inadequacies in the present Constitution of the territory and to make proposals for any amendments or alternative provisions that may be desirable. After carrying out island-wide consultations, the Commission submitted its report to the Governor on 31 March 1999. It is currently being considered by the Executive Council. In the meantime, the topic continues to be the subject of consultation between members of the Legislative Council and their constituents.

159. It can also be reported that the United Kingdom Government has recently put in train a review of the status and administrative arrangements of Ascension Island (one of the dependencies of St. Helena; see paragraphs 3 and 8 of the core document referred to in paragraph 156 above) with a view to developing the democratic and civil rights of those who live there. This review is still in progress.

Article 2

160. With reference to Article 2.2 of the Covenant and specifically with reference to discrimination on grounds of race, etc, the Committee's attention is drawn to the United Kingdom's 14th periodic report in respect of St. Helena under the International Convention on the Elimination of All forms of Racial Discrimination (ICERD) (paragraphs 301-303 of CERD/C/299/Add.9). As regards the legislation referred to in paragraph 303 of that report (i.e. legislation modelled on the United Kingdom's Race Relations Act 1976), the relevant Ordinance for the island of St. Helena (the Race Relations Ordinance 1997) was enacted on 26 March 1997 and came into force immediately. It has now been applied to Ascension also. As the report explains, Tristan da Cunha already had its own Ordinance, enacted in 1996.

161. With reference to Article 2.2 of the Covenant, though the courts of St. Helena are able to provide civil remedies or criminal sanctions for the violation of a person's rights, it must be borne in mind that the community is so small that there are no qualified lawyers in private practice. However, attention is drawn to the assistance and facilities, available to persons who need legal

representation or advice, that are described in paragraph 17 of St. Helena's core document (see paragraph 156 above), and it can now also be reported that a Public Solicitor was appointed in January 1998 to represent and advise members of the community. His services are provided free of charge to those whose disposable income and capital fall below the prescribed limits **S** others may be required to pay a contribution **S** and his office is funded by the St. Helena Government and the United Kingdom Government's Department for International Development. Further details are given in paragraphs 169 and 170 below, under Article 14 of the Covenant.

Article 3

162. It continues to be the case that men and women in St. Helena are entirely equal in the enjoyment of all the civil and political rights set forth in the Covenant. The laws which prescribe the qualifications of candidates for elected office, and of voters in elections to such office, make no distinction between men and women. Women are in fact active in the exercise of their civil and political rights and the twelve elected members of the Legislative Council at present include two women. As at October 1998, there was a total of 1,219 employees in the public service (excluding "community workers", i.e. registered unemployed persons who are given temporary employment on public works) of whom 800 were men and 419 were women. But out of the 100 senior posts no less than 52 were held by women. While no corresponding firm statistics are available for the private sector, it can confidently be reported that, there also, women are active and are employed on an equal footing with men. The position is essentially similar in the two Dependencies (Ascension and Tristan da Cunha). Out of the 11 Government Departments in Tristan da Cunha, four are headed by women and there are five women Deputy Heads of Department. While there is as yet no local legislation dealing with questions of equal pay and equal treatment in employment, the United Kingdom's Equal Pay Act 1970 is applicable in St. Helena by virtue of the English Law Application Ordinance 1987. The enactment of legislation to deal with discrimination on grounds of sex is currently under consideration and a draft Ordinance on that topic has already been prepared.

Article 6

163. The law of St. Helena on the matters dealt with in this article is the same as in the United Kingdom. There are therefore no offences which are punishable by death.

Article 7

164. As previously reported, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been extended to St. Helena. This extension took effect on 7 January 1989. The United Kingdom's initial report under the Convention in respect of St. Helena (CAT/C/9/Add.10 and see also CAT/C/9/Add.14) was examined by the Committee Against Torture in November 1992. The 2nd periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998. It can confidently be said that the provisions of Article 7 of the Covenant are fully observed in St. Helena. With respect to medical or scientific experimentation without the free consent of the subject, it can be added that St. Helena has neither the facilities nor the intention to carry out any such experimentation of any kind.

Article 10

165. The St. Helena Government seeks at all times to ensure that the provisions of this article are respected, and its current policy and practice in this respect place special emphasis on the reformation and social rehabilitation of all prisoners. In 1996, the gaol in St. Helena was inspected and reported on by Sir Stephen Tumim, formerly the Chief Inspector of Prisons in England and Wales. The recommendations contained in his report have all been accepted. Funding has been sought and obtained where necessary and most recommendations have been implemented. A revision of the existing prison regulations (the Gaol Rules 1960) has now taken place and entirely new and modernised Rules have been approved for publication and will issue in September 1999.

166. Under existing arrangements, prisoners in St Helena are visited regularly by members of a panel of visitors. These arrangements have been amplified in the new Gaol Rules and a new body called the "Visiting Committee" is being appointed. This Committee has to satisfy itself as to the state of the gaol and the treatment of prisoners, and in particular will hear any complaint or request that a prisoner wishes to make. It will also arrange for the inspection of prisoners' food and enquire into the health of prisoners or into any other matter that the Governor may specify. The Committee also has power to direct the Superintendent's attention to any particular matter affecting a prisoner and to inform the Governor of any abuse that comes to its knowledge. The new rules also require at least one member of the Committee to visit the gaol at least once every month, and the visit or can have access to the records of any prisoner. The Committee is also charged with making an annual report to the Governor concerning the state of the gaol, including any recommendation that it considers appropriate.

167. As regards the segregation of unconvicted and convicted prisoners, the prison rules require such segregation to be observed so far as practicable, but the size of the prison and its limited facilities do not at present permit complete segregation in practice. However, it is very rare for St. Helena to have unconvicted prisoners. When that does happen, they never share cells with convicted prisoners but may, on occasion, share meals. Juvenile prisoners are completely segregated from adult prisoners but the necessary steps are taken to ensure that they are not kept in total isolation. It is to be noted that it would be impossible to segregate juvenile prisoners from adult prisoners on Tristan da Cunha but there has in fact been no case of a juvenile prisoner on Tristan da Cunha for the past 15 years.

Articles 12 and 13

168. St. Helena law continues fully to respect the rights guaranteed by these two articles of the Covenant. A new immigration law (The Immigration Control Ordinance 1998) will come into effect on 18 October 1999. This Ordinance, which is fully in conformity with the Covenant, creates a new "St. Helenian status" which is enjoyed automatically by persons who have the prescribed connection with St. Helena by birth or descent but which may also be acquired by other persons if they satisfy the Immigration Control Board (consisting of seven St. Helenians appointed by the Governor) that they are of good character and that they comply with certain other statutory conditions, principally that they intend to make their home in St. Helena (or are married to St. Helenians) and that they have resided in St. Helena for a prescribed minimum period. Persons who have St. Helenian status have an unrestricted right to enter and remain in St. Helena, while persons who do not have that status may enter and remain in St. Helena only if they obtain from the Immigration Control Board an entry permit or, as the case may be, a work permit (which may be accompanied by a dependant's pass) or a visitor's pass. It should be added that, under the Landholding (Restriction) Ordinance 1987, a "non-Islander" **S** this term will in due course be

replaced by a reference to a person not having St. Helenian status **S** needs to obtain a licence from the Governor in Council in order to hold an interest in land in St. Helena.

Article 14

169. The provisions of this article of the Covenant continue to be fully respected in St. Helena, but attention can now be drawn to the additional measures, as described below, that have recently been introduced for the provision of free or assisted legal aid and advice to persons in need. These facilities are relevant to Article 14.3(d) in particular but they are also available in civil cases.

170. The position until recently (as was explained in the core document; see paragraphs 156 and 161 above) was that, though there were no professionally qualified lawyers in private practice in St. Helena, there was a system for formally recognised lay advocates to give legal advice, and to provide representation where necessary, under the Lay Advocates and Legal Assistance Ordinance 1986; and in serious criminal cases *ad hoc* provision was made for advice and representation to be furnished at public expense by English practitioners. Though these arrangements remain in force, the provision of legal aid has now been taken further by the creation, in January 1998, of the post of the Public Solicitor, whose office is funded partly by the St. Helena Government and partly by the United Kingdom Government. The Public Solicitor's functions are regulated by the Legal Aid and Advice Ordinance 1997 which empowers him, personally or through his staff, to provide legal aid (in the form of advice, assistance or representation) to persons who are involved in civil disputes or civil or criminal proceedings and whose disposable income and capital fall below the prescribed limits. Depending on his means, an aided person may be required to pay a contribution towards the costs, and a contribution may also be required from a successfully aided person out of the monies recovered or preserved for him in the proceedings in question. The Public Solicitor may refuse to provide legal aid where he considers that the issue involved is trivial or that the matter is so simple that such aid is not necessary or that the applicant's claim has no real merit. But the Ordinance expressly provides that there may be no such refusal in criminal proceedings where the Public Solicitor considers that the applicant, if convicted, is likely to receive a custodial sentence. It is to be noted that the arrangements just described do not apply to Tristan da Cunha where there are no persons with any legal expertise. In the very few cases which involve court proceedings there, the Administrator functions as the Magistrate and litigants or defendants represent themselves, though they may choose to be assisted by other persons.

Article 20

171. With reference to paragraph 2 of this article, attention is drawn to the fact that one of the provisions of the Race Relations Ordinance 1997 (see paragraph 160 above) amends the Summary Offences Ordinance 1975 by inserting a new section expressly prohibiting incitement to racial hatred. Under that new section, it is an offence, punishable on summary conviction by imprisonment for up to 6 months or a fine of up to £400 or both, for a person to publish or distribute written matter or to use words in a public place or at a public meeting if that written matter or those words are threatening, abusive or insulting and, having regard to all the circumstances, they are likely to stir up hatred against any racial group in St. Helena.

Article 21

172. Until recently, St. Helena lacked up-to-date legislation dealing with public processions and public assemblies. However, the Public Order Ordinance 1997, which is closely modelled on the corresponding provisions of the Public Order Act 1976 of the United Kingdom, now remedies that defect by requiring advance notice to be given of certain kinds of public processions and by permitting the authorities to impose conditions on the holding of any public procession or any public assembly if it is reasonably believed that it may result in serious public disorder, serious damage to property or serious disruption to the life of the community or that the purpose of the organisers is to intimidate others with a view to compelling them not to do what they have a right to do or to do what they have a right not to do. A "public assembly" is defined in the Ordinance as an assembly of 20 or more persons in a public place which is wholly or partly open to the air; a "public procession" is defined as a procession in a public place; and a "public place" is defined as any road or any place to which, at the material time, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

Article 22

173. The law of St. Helena has for very many years recognised and protected the right to form and join trade unions. Under the Trade Unions and Trade Disputes Ordinance 1959, which is still the operative legislation, the persons who form a trade union must, within three months of its formation, apply to the Registrar of Trade Unions for it to be registered. Various procedural requirements have to be complied with, e.g. the furnishing of information about the union's rules and their provision for the protection of members' rights and about the proper management of the union's funds and property. Once registration has been effected, the union, and its officials and members, are given legal protection for acts done by or on behalf of the union in contemplation or furtherance of a trade dispute. However, despite this long-standing legal framework, there are no trade unions which are currently registered under the Ordinance. There is no identifiable reason for the lack of interest, hitherto, in trade union activity but it is thought possible that the situation may change with the steady growth of employment in the private sector.

Article 24

174. The Convention on the Rights of the Child was extended to St. Helena on 7 September 1994. The United Kingdom's initial report in respect of St. Helena under the Convention was submitted to the Committee on the Rights of the Child in March 1999.

175. Partly because of the need to ensure full compliance with the Convention on the Rights of the Child and partly because it had become apparent that the law of England (which had previously been the governing law on this matter in St. Helena) was no longer wholly applicable to local circumstances, a new Ordinance (the Child Care Ordinance 1996) was recently enacted with a view to updating and gathering into one comprehensive piece of legislation all the necessary provision with respect to child care and the status of children. It deals with such matters as the guardianship of children, custody orders, the adoption of children, the legitimation of children on the marriage of their parents, the property rights of illegitimate children, the powers of the Child Care Officer (a public officer whose post was created under the Ordinance), the fostering of children, and the making of various kinds of orders for the protection or the maintenance of children (or for enforcing the payment of such maintenance) The Ordinance expressly lays down the principles that, in deciding issues concerning the legal custody or the upbringing of a child or concerning the handling of a child's property or income, a court must regard the welfare of the child as "the first

and paramount consideration" and that it must not, in deciding such issues, give greater force to the claims, rights and authority of the father as compared with those of the mother, or *vice versa*. The Child Care Ordinance 1996 does not replace previous legislation for the protection of children, e.g. from abuse by others or from harmful activities or occupations. That previous legislation continues in force and continues to be vigorously applied.

ANNEX I S TURKS AND CAICOS ISLANDS

I. General information

176. The Committee is referred to the core document ("the country profile") in respect of the Turks and Caicos Islands ("the TCI") contained in Annex XI to HRI/CORE/1.Add.62 (pp. 96-103). Save as is indicated in the following paragraphs of this report, the position as regards the matters covered by that core document remain substantially as described in it. The most up-to-date estimate of the current population of the TCI is about 21,000 (though it is impossible to be precise because of the fluctuating population of immigrant workers).

177. With reference to paragraph 20 of the core document for the TCI, the Court of Appeal has now been localised and sits regularly (currently, twice a year) in the TCI instead of in the Bahamas.

II. Information relating to substantive articles of Covenant

178. The following paragraphs of this Annex report, in relation to each article of the Covenant that is mentioned, the relevant developments that have taken place (including any problems that have been encountered) since the submission of the United Kingdom's 3rd periodic report under the Covenant in respect of the TCI S or, where a more up-to-date or fuller account was given in the course of the Committee's examination of that report, since that account was given. In respect of those articles of the Covenant that are not specifically mentioned, it is to be taken that there are no such developments to report.

Article 1

179. With reference to the right of self-determination, it can be reported that there is no indication of any significant body of opinion in the TCI in favour of a change in the territory's status or in its relationship with the United Kingdom. The issue of independence is not one that has been raised by either of the main political parties.

Article 2

180. As regards Article 2.1 and with specific reference to discrimination on grounds of race, etc., the Committee's attention is drawn to the United Kingdom's 14th periodic report in respect of the TCI under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (paragraphs 304-324 of CERD/C/299/Add.9). The Committee will also bear in mind that section 78 of the Constitution of the TCI contains a prohibition, enforceable through the courts, of any law which is discriminatory either of itself or in its effect and of any discriminatory act committed by any person acting under any law or in the performance of the functions of any public office or any public authority. This prohibition, which of course continues

in force, applies to discrimination on a wide variety of grounds (not merely race) and is also not limited to discrimination in the enjoyment of the rights recognized in the Covenant.

181. As regards Article 2.2 and 2.3 of the Covenant, the Committee is reminded that Part VIII of the Constitution of the TCI continues to provide judicially enforceable guarantees of the fundamental rights and freedoms of the individual and also that remedies against injustice caused by maladministration on the part of a government department or a statutory authority are available to any member of the public through recourse to the independent Complaints Commissioner (the Ombudsman).

Article 3

182. The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) was extended to the TCI in 1986. The United Kingdom's 3rd periodic report in respect of the TCI under that Convention was submitted in January 1999 and was examined by the Committee on the Elimination of Discrimination against Women in June 1999.

183. It continues to be the case, both in law and in practice, that no differentiation is made between men and women in the TCI as regards their enjoyment of the rights set out in the Covenant. Indeed, section 67 of the Constitution of the TCI (the preambular section to Part VIII of the Constitution) expressly provides that the fundamental rights and freedoms of the individual, as guaranteed by the subsequent provisions of Part VIII, are to be enjoyed by every person in the Islands irrespective of his or her sex (among other prohibited grounds for differentiation). Moreover, the TCI's statute-book has for many years contained legislation (the Sex Disqualification (Removal) Ordinance, enacted in 1950) which provides that a person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation or for admission to any incorporated society. So far as the public service is concerned, men and women compete on equal terms for appointment and promotion and are paid equally. (However, General Orders, which are the non-statutory rules which regulate the terms and conditions of service, etc. of public officers, not only provide for maternity leave for female officers but also contain another provision which gives women an advantage not available to men. A female public officer who intends to marry may retire from the public service but still be entitled to a marriage gratuity under the relevant pensions laws; this option is not open to male public officers).

184. Women are in fact well-represented in the public service and in public life generally. Two of the elected members of the Legislative Council and the Government's Appointed Member are women. The Chief Secretary, who is the Head of the TCI Civil Service and an appointed member of the Executive Council and of the Legislative Council, is a woman, as is also the Establishment Secretary. Women account for approximately half of the public service and include two Permanent Secretaries (the most senior official in a Ministry), 19 Heads of Department and four Deputy Heads of Department, and all four District Commissioners. Nine out of the ten Heads of Primary Schools and one of the four Heads of Secondary Schools are women, as is the Principal of the Turks and Caicos Islands Community College.

185. The TCI Government have recently appointed a Co-ordinator of Women's Affairs whose responsibilities include encouraging and improving the independence and liberation of women,

encouraging young women to pursue careers at all levels and in all fields (including those traditionally reserved to or controlled by men) and empowering women through education and training so that they may raise their own status and participate fully in their own development process.

Article 4

186. There has been no occasion for many years for the declaration of a public emergency in the TCI or the invocation of emergency powers.

Article 6

187. Although section 68 of the Constitution of the TCI, which prohibits the intentional taking of life, makes an exception for capital punishment imposed by a court for a criminal offence, the death penalty for the offence of murder was in fact abolished in the TCI, as in the United Kingdom's other Caribbean Overseas Territories, by an Order in Council made in 1991 by the United Kingdom Government (the Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991). (The Committee was informed during its examination of the 3rd periodic report in respect of the TCI under the Covenant that this Order was then being prepared.) Theoretically, this still leaves the death penalty available in the TCI for the offence of treason, but in practice it is no longer carried out for any offence.

188. As regards the positive protection of the right to life, the unlawful killing of any person continues, of course, to be punishable in the TCI by appropriately severe penalties (life imprisonment in the case of murder), and the TCI Government continues to pursue policies aimed at reducing avoidable deaths as a result of disease, malnutrition, etc. In 1994, the University of Keele (in the United Kingdom) carried out for the TCI Government a review of the health sector which led to a policy decision to place increased emphasis on primary health care and to the establishment of a Primary Health Care Unit. This has resulted, in particular, in a number of improvements being introduced in the field of maternal and child care which have been instrumental in reducing infant mortality. In 1995, the infant mortality rate was 30 per cent; in 1996 it fell to 24 per cent; and in 1997 it fell to 13 per cent. The TCI Government also currently operates a highly successful programme of immunisation for the elimination and prevention of childhood diseases and also programmes aimed at improving sanitary and epidemiological conditions and at ensuring ready access to secondary health care and to tertiary health institutions.

Article 7

189. As previously reported to the Committee, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was extended to the TCI with effect from 7 January 1989. The United Kingdom's initial report under the Convention in respect of the TCI (CAT/C/9/Add.10, and see also CAT/C/9/Add.14) was examined by the Committee Against Torture in November 1992. The second periodic report (CAT/C/25/Add.6) was examined in November 1995. The 3rd periodic report (CAT/C/44/Add.1) was examined in November 1998. As will be seen from that 3rd periodic report, a law has been enacted to remove from the statute-book of the TCI all the provisions which had previously authorised judicial corporal punishment. It came into force on 15 May 1998. See also paragraphs 191-194 below (under Article 10 of the Covenant) as regards the treatment of prisoners.

Article 10

190. There have been two recent significant developments relevant to Article 10 of the Covenant. The first is the introduction of new prison regulations (the Prison Regulations 1995) which came into force on 1 January 1996. These constitute a comprehensive revision and consolidation of the previous rules governing the treatment of prisoners and prisoners' rights. The body of the Regulations starts with the statement that "the purpose of the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release." The particular matters covered by the Regulations include the procedures for the admission, search and briefing of new prisoners; privileges; temporary release; religious ministration; clothing, food and drinking water; alcohol and tobacco; accommodation and hygiene; work; education and social welfare; outside contacts and aftercare; letters and visits; discipline; and the constitution and functions of the Visiting Committee. A copy of the Regulations is being transmitted to the Committee's Secretariat together with this report. The Regulations themselves require that a copy shall be made available to any prisoner who requests it.

191. The second development has been the construction and opening, in July 1996, of a new prison. This is a modern facility with the capacity to accommodate 88 prisoners. As at 22 October 1998, the prison population was 86, of whom 83 were male and 3 female. The prison has three wings. One of these wings, containing 8 cells, each with its own toilet and washbasin, is set aside for female prisoners only, who are thus kept entirely separate from male prisoners (as the Regulations expressly require). Female prisoners are supervised exclusively by female prison officers.

192. Except for female prisoners and prisoners who are categorised as falling into Category A (i.e. those "who must be held in accommodation to the highest level of security available and whose escape would be a danger to the public, the police or the nation"), prisoners are not, in general, segregated from each other. As at 22 October 1998, there were 10 Category A prisoners. But the Prison Regulations provide for juvenile prisoners (i.e. persons aged 18 years or younger) to be kept separate from other prisoners and for remand prisoners to be kept separate from convicted prisoners so far as practicable. In practice, it is very rare to have juvenile offenders in prison. TCI law (section 15 of the Juveniles Ordinance 1968) continues to require arrangements to be made to ensure that juveniles are prevented from associating with any adult (other than a relative) while detained in a police station or while being conveyed to or from a court or while waiting before or after attendance in a court. It is to be noted that TCI law does not permit a child (i.e. a person under 14 years of age) to be imprisoned as a result of his conviction by a court for any offence but, if no other sentence or order is appropriate, he may be ordered to be detained, for a term not exceeding 3 years, in such place and subject to such conditions as may be appointed.

193. Although unconvicted prisoners have a few extra privileges **S** for example, they may choose to wear their own clothing, they may choose to be attended to by their own doctors or dentists and they may choose whether or not to work **S** in general all prisoners enjoy the same privileges. However, those in the highest security categories (Categories A and B) are not allowed to work outside the prison and those in Category C are allowed to work outside only under supervision; those in Category D may work outside even without supervision. The work on which prisoners are engaged outside the prison takes the form of social and community service, e.g. in the Hospital and in government buildings. The prison diet is well-balanced. Prisoners receive three hot meals a day, including a variety of meats and fish, orange juice, milk and vegetables. Although only unconvicted prisoners are strictly entitled **S** but of course not obliged **S** to have food sent in (at

their own expense) from outside, this privilege is in practice extended to all prisoners on weekends and public holidays.

194. The training programmes currently available for prisoners are (i) blockmaking/ masonry; (ii) screen-printing; (iii) small-scale farming; (iv) chicken and pig rearing; and (v) carpentry. There are daily literacy and numeracy classes, and there are plans to establish a library and to introduce correspondence courses if funds can be found. For recreation, the prison also has a gymnasium and table tennis facilities, as well as TV and VCR facilities.

Article 12

195. The previous law regulating entry into and deportation from the TCI, which of course had effect subject to section 77 of the Constitution of the TCI (protection of freedom of movement), has now been repealed and replaced by the Immigration Ordinance 1992. The new Ordinance is also subject to section 77 of the Constitution, and the updating of the law has not affected the continued enjoyment, by all persons lawfully within the TCI, of the rights guaranteed to them by Article 12 of the Covenant.

Article 13

196. The provisions of the Immigration Ordinance 1992 regulating the deportation of "non-belongers" do not provide, as the legislation previously in force did, that a proposed deportee has the express right to appeal to the Governor against the making of a deportation order. However, he still has the right to seek judicial review of the decision to deport him.

Article 14

197. In general, the provisions of Article 14 of the Covenant, which are closely reflected by section 72 of the Constitution of the TCI, continue to be scrupulously observed in the TCI. As noted in paragraph 178 above, the Court of Appeal now regularly sits in the TCI itself (in Providenciales) instead of, as previously, in the Bahamas, and this change has undoubtedly facilitated the more expeditious handling of both criminal and civil proceedings. However, it remains the position that the TCI have no statutory provision for legal aid in civil or criminal matters. In the most serious criminal cases and if the accused person cannot afford to provide his own legal representation, the practice is that the court (both on trial at first instance and on appeal) will appoint an attorney to represent him. But it is recognised that this is not fully satisfactory and it is intended that provision for a legal aid system should be included in legislation on the legal profession which it is hoped will be enacted in the course of 1999.

Article 24

198. The Convention on the Rights of the Child was extended to the TCI on 7 September 1994. The United Kingdom's initial report in respect of the TCI under that Convention was submitted to the Committee on the Rights of the Child in March 1999.

_____