



**International covenant
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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 2542nd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 8 July 2008, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 10 a.m.

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

Sixth periodic report of the United Kingdom of Great Britain and Northern Ireland
(continued) (CCPR/C/GBR/6)

1. At the invitation of the Chairperson, the members of the United Kingdom delegation resumed their places at the Committee table.
2. The CHAIRPERSON invited the delegation to respond to the supplementary questions raised by the Committee at the previous meeting.
3. Ms. HARDY (United Kingdom), responding to the question whether the United Kingdom was more concerned to ensure compliance with its obligations under the European Convention on Human Rights than with those under the Covenant, assured the Committee that the United Kingdom did not view its obligations under international law in hierarchical terms but took all its obligations equally seriously. While it was deeply committed to the European Convention because of its historic role in drafting the instrument, it also fully supported the Covenant and promoted its universal ratification. Before entering into any treaty obligation, the United Kingdom ensured that its domestic law was consistent with the instrument's provisions. If it was unable to comply with any provision, it would enter a reservation; such reservations were kept under review. Given the country's long history of respect for human rights, it was not surprising that the enactment of new legislation was not always necessary to comply with its more recent obligations under international human rights instruments.
4. With regard to the appointment of black women to the judiciary, she confirmed that the Judicial Appointments Commission was taking action to increase the representation of ethnic minorities. She was pleased to report that the current Attorney-General was a black woman.
5. It had been suggested that there was a loophole in the definition of "public authority" in the Human Rights Act. The reference in the definition to a body that had some functions of a public nature clearly covered government contractors providing a service on behalf of the State, including, for example, private prisons. The House of Lords had found that a care home was not exercising functions of a public nature, and the Government had recently amended the Health and Social Care Bill to address that situation.
6. The handling of genetic information was protected by data-protection and other laws. The United Kingdom also approached issues of biomedical ethics with the utmost seriousness.
7. Mr. NYE (United Kingdom), responding to a question regarding the possibility of prosecution of police officers for the tragic death of Jean Charles de Menezes in 2005 following consideration of the issue by the Independent Police Complaints Commission and the prosecution of the Metropolitan Police under health and safety laws, said that the possibility could not be ruled out if further evidence came to light in the future. The Commission's

recommendations had been published on 8 November 2007 and had either been implemented or were in the process of implementation. Many related to training, for instance in the use of firearms, command and control, and clarity of responsibility.

8. With regard to the inadmissibility of evidence obtained through torture, the definition of the term “practicable” in the House of Lords judgement was a matter for the courts in individual cases, but his Government would offer its assistance, for instance by disclosing relevant material in its possession. The question arose only with respect to evidence obtained overseas, as torture was not practised in the United Kingdom. Courts could conduct inquiries overseas as far as practicable.

9. Control orders under the Prevention of Terrorism Act, 2005 did not constitute immigration law and were applicable to British citizens and foreigners alike. On 10 June 2008, the last occasion on which data had been published, 15 control orders had been in force, of which 3 concerned British citizens. They were not criminal proceedings either but civil-law obligations. It followed that the standard required for imposing a non-derogating control order was “reasonable suspicion” rather than a higher standard. However, the order must be proportionate to the threat posed by the individual and necessary to address the threat, in other words demanding standards that were challenged in court. The Government did not comment on individual cases, both to protect the anonymity for which most control-order subjects had applied and to avoid revealing the details of operational methods. However, a report on the regime as a whole was issued every year by the Independent Reviewer of Terrorism Legislation.

10. There was no requirement for reasonable suspicion where stop-and-search powers were exercised under the Terrorism Act, 2000 because the purpose of such measures was not to catch terrorists but to deter acts of terrorism.

11. Assurances in cases of deportation were usually verified by independent monitoring bodies provided for under a memorandum of understanding with the country concerned. For example, the monitoring body in Jordan was the independent Adaleh Center for Human Rights Studies. The arrangements in Algeria involved enquiries by the British Embassy. He assured the Committee that the Government would not deport an individual where there was a material risk of torture. The adequacy of the assurances was assessed in the light of each case. The assurances obtained were detailed, reciprocal, negotiated at a high level and, in the Government’s view, adequate.

12. The United Kingdom had intervened in the Saadi v. Italy case before the European Court of Human Rights to argue for a balancing test between the individual deportee’s right to be free of the risk of torture and the right of the rest of the population to be free of the risk of terrorist violence, in other words to enjoy the right to life as enshrined in article 6 of the Covenant. Prior to the Chahal v. the United Kingdom case in 1996 such a test had been possible. The United Kingdom, acting in support of the Government of Italy, had asked the Court to reconsider its approach, but the Court had declined. As a result, the United Kingdom did not apply a balancing test and its deportation policy did not rely on such a test.

13. He was unable to comment on an allegation of torture made during the Committee’s review of human rights in Algeria without obtaining further details. He reiterated, however, that there was no torture in the United Kingdom.

14. Pre-charge detention was the subject of considerable controversy and debate both within Parliament and outside. He contested the assertion that the United Kingdom had the longest period of pre-charge detention in Europe. International comparisons were not straightforward and could be misleading. In some Western European jurisdictions, periods of detention under the supervision of an investigating judge could be significantly longer before something approximating a charge in a common-law jurisdiction was brought. Pre-charge detention in the United Kingdom was used solely for the purpose of pursuing investigations and not for preventive detention. A number of alternatives referred to by Committee members were already in use, for instance the threshold test for charging; others were either being introduced or were under scrutiny for potential introduction. None, however, would significantly mitigate the general 28-day requirement or the 42-day requirement in grave exceptional circumstances. The trend over the past 10 years had been towards more sophisticated and complex terrorist plots involving more international connections and more complicated forensic work. The Government very much hoped that it would not need to have recourse to the 42-day option, but it might need to if an even more complex and dangerous terrorist plot occurred.

15. He fully agreed that it was important to address the root causes of terrorism. A comprehensive strategy was being implemented to that end, including extensive efforts to prevent vulnerable young people from turning to terrorism.

16. Mr. LYNCH (United Kingdom) said that the Government supported the further devolution of power to the Northern Ireland Assembly. It was ready to begin the process of devolution of justice and policing powers, including statutory right protections such as the custody visiting scheme, the Criminal Justice Inspectorate and the independent Police Ombudsman for Northern Ireland, as soon as the Northern Ireland administration indicated that it was ready. There were, however, no plans to devolve power to legislate on human rights issues to the Assembly.

17. He would provide the Committee with a list of the oversight and accountability mechanisms that were already in place in Northern Ireland.

18. Members of the black and ethnic-minority community in Northern Ireland held 0.39 per cent of police-officer posts. According to the 2001 census, the community accounted for less than 0.5 per cent of the population.

19. He assured the Committee that sectarian crime in Northern Ireland was taken seriously. Legislation enacted in 2004 gave additional sentencing power to courts where there was evidence that a crime had been motivated by disability, sexual orientation, race or religion. The police service recorded such crimes separately: 1,200 had been recorded in 2007, compared with 1,500 in 2006.

20. Ms. MOORE (United Kingdom) said that all emergency powers in Northern Ireland had been repealed in 2007. However, the Justice and Security (Northern Ireland) Act, 2007 permitted non-jury trials in specific situations and the army had special powers relating to public order. The powers would be reviewed annually by an independent reviewer.

21. According to the second annual review of firings of attenuating-energy projectiles, there had been no officially reported injuries since the introduction of such projectiles in June 2005.

She conceded, however, that official complaints might not be forthcoming because of the circumstances in which injuries occurred. The authorities were aware that Dr. Kevin Maguire of the Royal Victoria Hospital in Belfast had reported 18 alleged projectile injuries suffered by 14 people that had not led to complaints. That report would be taken seriously and any deficiencies would be addressed in appropriate guidelines. The Police Service of Northern Ireland and members of the United Kingdom Less Lethal Weaponry Steering Group, including medical advisers, had met with Dr. Maguire in April 2007 to clarify timelines and relate them to reported strikes and to share research findings and medical modelling. It was agreed that in any future case Dr. Maguire would share general information on the nature of any injuries so that the results could be reflected in approaches to the use of attenuating-energy projectiles. The outcome of the meeting had been discussed with the Human Rights Committee of the Northern Ireland Policing Board.

22. The Chief Constable of Northern Ireland was currently piloting the use of tasers with a small number of specially trained firearms officers. No taser had been used in Northern Ireland to date.

23. Ms. PETTIFER (United Kingdom) said that the three public inquiries in Northern Ireland referred to by one Committee member were independent of the Government and operated under the direction of the judges chairing them. The time they were taking reflected the scale and complexity of the task, with thousands of pages of documents to be taken into consideration and many witnesses to be interviewed. Each inquiry had also been the subject of multiple legal challenges by interested parties.

24. With regard to the murder of the solicitor Pat Finucane, many of the allegations made related to the activities of the security forces and the handling of informants. It had been alleged, for instance, that the security forces had known of the threat to his life and had done nothing to prevent the murder or had even facilitated it. It was therefore highly likely that any inquiry would examine the content of intelligence material and the way in which it had been gathered. Although a restriction notice due to the sensitivity of evidence might prevent the family from ascertaining some of the facts of the case, the conclusions of any inquiry would be reflected in a final report, most of which would be published.

25. Mr. McLEAN (United Kingdom), referring to his country's reservation to article 12 of the Covenant, said that only British citizens and certain British subjects enjoyed a right of abode, i.e. a right to live permanently in the United Kingdom. The British Nationality Act, 1981 determined who was entitled to citizenship on the basis of the strength of his or her connection with the United Kingdom. Persons with other forms of British nationality, such as British nationals overseas, must qualify under the immigration rules in the same way as other applicants. British nationals without right of abode in the United Kingdom could register as British citizens if they lived in the country for five years and met certain residence requirements. They did not have to demonstrate a knowledge of English or pass a "Life in the United Kingdom" test like applicants for citizenship via the naturalization route. The Nationality Act also contained extensive provisions allowing children residing in the United Kingdom who might otherwise be stateless to acquire citizenship.

26. There was a registration provision in the Nationality Act that addressed previous discrimination against those born to a mother from the Commonwealth. It had been limited, however, to persons born after 7 February 1961. He was pleased to announce that the Government now proposed to extend the provision under the Citizenship and Immigration Bill due to come before Parliament in 2009 so that it would apply to all children born to a Commonwealth mother who otherwise satisfied the registration requirements, regardless of their date of birth.

27. Mr. BARRETT (United Kingdom) said that there was no dedicated detention facility for immigration detainees in Northern Ireland owing to the small number of individuals involved. Persons detained in Northern Ireland were normally held in police cells for 24 hours pending transfer to Great Britain. Families with children were transferred on the same day without being held in police cells. As detainees were frequently apprehended at a port, they would have no local legal representation. Where they had legal representation in Northern Ireland, they were guaranteed access to comparable representation in Great Britain.

28. Disaggregated data on the number of immigration detainees transferred to prison on the basis of the four criteria listed in paragraph 127 of the United Kingdom's written replies to the list of issues (CCPR/C/GBR/Q/6/Add.1) were not available. With regard to length of detention, the general principle that removal should be a realistic prospect within a reasonable period still applied. The United Kingdom had no plans to introduce a time limit on immigration detention. The Government considered that such a limit would be arbitrary, take no account of individual circumstances, and encourage detainees to frustrate and delay immigration processes in order to reach the point where they must be released.

29. Information on bail rights for immigration detainees was contained in the "reasons for detention" notice served on all detainees. The notice must be explained in all cases, using an interpreter if necessary.

30. Ms. ELLIOT (United Kingdom) said that it was not necessary for unsuccessful asylum-seekers to become homeless and destitute. Applicants who were temporarily unable to leave the United Kingdom owing to circumstances beyond their control could request support under the Immigration and Asylum Act, 1999. The support took the form of self-catering accommodation with vouchers to purchase food and essential toiletries. It continued until the barrier to leaving the United Kingdom was removed. Difficulties had arisen regarding non-accommodation requirements such as essential travel, basic maternity care and additional needs of children. New regulations making provision for the most vulnerable, such as pregnant women, babies and children, had come into force in January 2008. Families with dependants under the age of 18 also continued to be eligible for support under the Immigration and Asylum Act, 1999 until the youngest child reached the age of 18.

31. Mr. DAW (United Kingdom) said that the Head of the Prison Service's Race Equality Action Group now reported to, and was managed by, the Chief Executive of the National Offender Management Service. Outreach teams were deployed to prisons to support governors in implementing the relevant policies, and quarterly reports on racial incidents were submitted to the Prison Service Management Board and area managers.

32. The Government had recently endorsed an independent report on prison overcrowding. It had committed £1.2 billion to a prison-building programme which would provide an additional 10,500 places. Research showed that overcrowding did not have a major impact on suicides and self-harm in prisons. It was far more important for inmates to receive adequate care in the form of, for instance, personal officers and listeners.

33. The Criminal Justice Act, 2003 had set up a Sentencing Guidelines Council which provided courts with recommendations on sentencing. The courts nevertheless continued to be independent.

34. All visits to prisons in the United Kingdom were open. There were no glass partitions. Towards the end of a long prison sentence, prisoners spent weekends at home to renew family contacts. With regard to community-based punishments, the National Offender Management Service and the Department of Communities and Local Government were engaged in consultations with local communities on local projects involving community penalties.

35. Ms. AKIWUMI (United Kingdom) said that courts in her country had enquired on several occasions about whether human rights law was being applied to military operations overseas. The House of Lords had examined the application of the European Convention on Human Rights to military detention centres in Iraq run by the United Kingdom in the cases of Al-Skeini v. Secretary of State for Defence and Al-Jedda v. Secretary of State for Defence.

36. The human rights obligations of the United Kingdom were primarily territorial obligations owed by the Government to the people. It followed that the Covenant could only have effect outside the territory of the United Kingdom in very exceptional circumstances. While obligations under the Covenant could, in principle, apply to persons taken into custody by United Kingdom forces and held in military detention facilities outside the country, any such decision would have to be made in the light of the prevailing facts and circumstances. However, she reassured the Committee that the fundamental principle of humane treatment was not affected by that position. The United Kingdom strove to maintain the highest standards of treatment and all detention facilities were open to inspection by independent bodies. The International Committee of the Red Cross (ICRC) had unfettered access to them and conducted regular inspections. The members of the armed forces were subject to English criminal law and could be convicted of crimes against the person, including torture, wherever they were serving.

37. The military police had recently been the subject of an independent inspection by Her Majesty's Inspectorate of Constabulary, which had found that they were capable of meeting the challenges arising in operations overseas.

38. Ms. DICKSON (United Kingdom) said that primary responsibility for implementing human rights obligations extending to the Overseas Territories lay with the Territory Governments, although the United Kingdom had ultimate international responsibility for compliance with treaty obligations. In the constitutional review which the Government was currently conducting with most Territories, it was seeking to ensure that their constitutions reflected, at a minimum, the provisions of the Covenant and the European Convention on Human Rights.

39. The Covenant did not apply to the British Indian Ocean Territory because the United Kingdom had not ratified it on behalf of the Territory at the time of or since its accession. Concerning Chagos islanders, as her Government was currently appealing to the House of Lords a judgement by the Court of Appeal allowing them to return to the outer islands of the Territory, it would be inappropriate to comment on the outcome. The Government had provided them with compensation amounting to £14.5 million, and a significant number of them had acquired British citizenship with right of abode in the United Kingdom.

40. Although corporal punishment still existed in schools in the Overseas Territories, in particular the Caribbean Territories, it was not practised in the Turks and Caicos Islands and was prohibited in Gibraltar and the Falkland Islands. Where it existed, it was administered under strict conditions. The Government raised the issue with the Territories when the opportunity arose, although it had not insisted on abolition to date. There was no intention to extend United Kingdom legislation on civil partnerships to the Overseas Territories. It was for the Territories to decide whether to legislate in those areas.

41. Mr. BURTON (United Kingdom) said that his Government had been informed by the United States Government that, despite earlier assurances that Diego Garcia had not been used for rendition flights, recent United States investigations had revealed that two such flights had in fact transited the Overseas Territory in 2002. After receiving the new information, the Government had invited non-governmental organizations (NGOs), parliamentarians and others to help to compile a list of flights through the United Kingdom and the Overseas Territories over which concerns about rendition had been raised and sent the list to the United States Government. The United States had recently confirmed that there had been no other instances since 11 September 2001 of United States intelligence flights landing in the United Kingdom, its Overseas Territories or Crown Dependencies with a detainee on board, and extended assurances that there would be no such future rendition without the express permission of the United Kingdom Government. Such permission would only be granted in accordance with its domestic law and international obligations.

42. The Government condemned any practice of extraordinary rendition leading to torture and never used torture for any purpose. The Intelligence and Security Committee had recently found that it would be impractical to carry out extensive rendition-related checks on aircraft transiting United Kingdom airspace. As it was not possible to check every flight, an intelligence-led approach should be used.

43. Mr. O'FLAHERTY enquired whether efforts could be made to make greater use of the so-called threshold test. He said that he would welcome the views of the delegation on the compatibility of the extension of the period of pre-charge detention to 28 days, or indeed the proposed 56 days, with article 9 (2) of the Covenant. Lastly, as the United Kingdom was indeed ultimately responsible for compliance with the treaty obligations of Overseas Territories, he urged the Government to reconsider its position on extending United Kingdom legislation on corporal punishment and civil partnerships to those Territories.

44. Ms. CHANET enquired about the obstacles to acceding to the First Optional Protocol, especially as all other members of the European Union had already done so. She would also like to know when detainees suspected of involvement in terrorism-related offences received a medical examination and when they could contact a family member.

45. Ms. WEDGWOOD said that the delegation should make an active commitment to reviewing its reservations to the Covenant, including with respect to military law, prison law, the Sovereign Base Areas in Cyprus and Diego Garcia. The delegation's statement that stop-and-search was a civil-law obligation did little to clarify the extent to which stop-and-search was reasonable in specific situations. Clarification was also needed on the legal status of the memoranda of understanding on deportation with assurances referred to in the report.

46. Ms. MOTOC requested further information on the genetic databases maintained by the Government, steps to prevent misuse of the samples recovered from crime scenes and the length of time records were kept after an offence had occurred.

47. Mr. NYE (United Kingdom) said that it was for the Crown Prosecution Service to decide whether to apply the threshold test more often. The Service was independent from the State and used the test wherever appropriate to ensure a fair trial. Concerning the compatibility of pre-charge detention with article 9 (2) of the Covenant, the Government saw no material difference between that article and article 5 (2) of the European Convention on Human Rights, with which it already complied. Once a decision was made to charge an arrested suspect, there was no delay in informing the person of that fact. Since the introduction of the Terrorism Act there had been every opportunity to challenge the compatibility of pre-charge detention with the Convention and hence with Covenant rights.

48. There was an extensive code of practice governing the welfare of detainees, including a rule stating that any detainee held for more than 96 hours must be visited by a health-care professional at least once every 24 hours. It also provided for contact with family, friends or others interested in the welfare of the detainee provided that the detainee agreed and at the custody officer's discretion.

49. He explained that the introduction of control orders, not stop-and-search, involved civil-law obligations. Stop-and-search was predicated not simply on reasonable suspicion but also on its expediency in preventing acts of terrorism in the view of a senior police officer. Lastly, the aforementioned memoranda of understanding were diplomatic agreements between States.

50. Ms. HARDY (United Kingdom) said that her Government was currently reviewing the experience of having ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The two communications which had been submitted against the Government to date had been found inadmissible because the authors had not exhausted all domestic remedies.

51. Ms. DICKSON (United Kingdom) said that while the Government expected the Overseas Territories to abide by human rights obligations which had been extended to them, it must respect the existing constitutional relationship with them and the internal division of responsibilities. Human rights were primarily an Overseas Territory Government responsibility. The issue of corporal punishment remained under review by the United Kingdom Government and would be raised at the annual Overseas Territories Consultative Council meeting. In 2000, the Government had ordered the Council to decriminalize homosexual relations between

consenting adults in the Caribbean Territories when it had become clear that they would not do so on their own after a lengthy period of discussion and negotiation. Nevertheless, it was preferable to allow the Territories to legislate for themselves.

52. Ms. COLLINS-RICE (United Kingdom), referring to protection against arbitrary expulsion, said that the Cayman Islands authorities were responsible for deportation matters in that Territory. The assertion that the Governor could deport any person considered destitute or undesirable was inaccurate. The Governor did not have the authority to deport anyone who was entitled to permanent residence on the Islands. The terms “undesirable persons” and “destitute persons” were clearly defined by law, and no such persons had ever been removed from the Islands. The 46 deportations between 2005 and 2007 had involved persons convicted of serious crimes. Those persons enjoyed the right of appeal. Any undesirable or destitute persons subject to deportation could seek judicial review of the deportation decision. In cases not involving serious criminal offences the person had the right to challenge his or her deportation. Deported persons also had the right to appeal their decisions to the European Court of Human Rights.

53. Mr. NYE (United Kingdom) said that the Police and Criminal Evidence Act provided the framework for police powers and safeguards involving arrests, detention, investigation, identification and interviews of detainees, including suspected terrorists. Under the Act, free legal advice must be provided to each detainee. If the detainee refused to exercise that right, he or she must be reminded of the right before the commencement of any interview. The Code did enable the police to delay access to a chosen solicitor if such access was regarded as liable to have detrimental effects, such as alerting a third party or interfering in the investigation. Nevertheless, in such an event, the detainee had the right to choose another solicitor.

54. Mr. BRAMLEY (United Kingdom) said that the Government had extensively reviewed the compatibility of anti-social behaviour orders (ASBOs) with article 6 of the European Convention on Human Rights and article 14 of the Covenant. Breaching such an order constituted a criminal offence. The behaviour to be restrained was made clear to the defendant when the order was made and criminal proceedings were instituted with respect to the breach. The issue of a violation of article 15 of the Covenant did not arise, as it was a criminal offence under international law to breach the order. There was every opportunity to challenge the human rights compatibility of any proceedings under the Human Rights Act. National studies had concluded that the use of the orders had not brought a new group of persons into custody. Rather, they involved a hard core of individuals deeply involved in anti-social behaviour and crime who were prolific offenders. The maximum sentence for juvenile offenders was 12 months in custody. Those under 12 could only receive a community order for breach of an ASBO. Studies had also shown that the perception of anti-social behaviour had decreased dramatically between 2003 and 2006. The number of such offences had dropped considerably as early intervention had greatly increased.

55. Ms. MOORE (United Kingdom) said the Government regretted that, despite considerable progress towards normalization in Northern Ireland, paramilitary groups continued to maintain a hold on some communities, making it possible for them to pervert the course of justice. Consequently, special non-jury arrangements for certain trials in Northern Ireland remained necessary in order to counter the risks to the administration of justice which arose from paramilitary and community-based pressure on jurors. The law specified that such arrangements could be made only under certain circumstances.

56. The Government regretted that the arrangements were considered necessary at present and looked forward to dispensing with them as quickly as possible, enabling a full return to jury trial in Northern Ireland. However, it should be noted that, unlike the Diplock court system, the arrangements were based on a presumption that all cases would be jury trials. Under the Diplock system, there had been an average of 64 non-jury trials a year. To date, the Director of Public Prosecutions had certified 25 non-jury trials under the new arrangements. The non-jury trial provisions were temporary and, unless renewed, would end in July 2009. They would be retained only for as long as was necessary.

57. Ms. ASHBY (United Kingdom) said that the Government had announced in January 2008 its proposal to abolish the common-law offences of blasphemy and blasphemous libel. There had been no public prosecution under the blasphemy laws since 1922. The Government viewed them as outmoded and unenforceable and a blot on what was otherwise the United Kingdom's good human rights record. The laws afforded protection only to the tenets of the Church of England or other churches insofar as they coincided with those of the Church. The Government had consulted with the Church before proceeding with the measure and ensured that members of other faith communities had the opportunity to express their views. Expanding the racially aggravated offences to include religiously aggravated offences in 2002 and passing the Racial and Religious Hatred Act in 2006 made it plain that members of religious groups should be afforded the same kind of protection as had existed for racial groups.

58. Turning to question 22, she said that her Government was determined to tackle the growth of Islamophobia and stamp out extremism and racism. It deplored all religious and racially-motivated attacks. It was determined to ensure that events involving the Muslim community should not be used as an excuse to blame, persecute or preach inflammatory messages about any particular group. The Government had a shared responsibility to tackle Islamophobia and all other forms of racism and prejudice against lawful religious traditions, not only with those communities directly affected, but with all members of society. British Muslims must be able to live free from threat of physical and verbal attack, and should feel connected to their local area and society as a whole. According to recent survey data, ethnic minorities, particularly those with roots in Muslim countries, had a positive outlook on life in the United Kingdom, and felt a strong sense of belonging to their local community. The Government was committed to working with faith and non-faith communities to build a more inclusive, tolerant and cohesive society.

59. The Government had recently strengthened the legislative framework for racial discrimination and increased the penalties for offences such as incitement to racial hatred and assault motivated by race or religion. The police were aware of the need to reassure communities that might be targeted, and liaised directly with community leaders.

60. In a policy statement issued in July 2003, the Crown Prosecution Service had stated its commitment to addressing racial and religious crimes fairly and firmly, which had given a clear message to perpetrators that those crimes would not be tolerated. According to the recent findings of the British Crime Survey, less than 0.1 per cent of the population reported having been a victim of a crime motivated by religion. The Government was aware that research had shown an increase in reports of Islamophobia, but wished to point out that the increase might, in part, be due to an increase in reporting rather than in the number of cases. The Government was funding a range of projects around the country to tackle Islamophobia and improve reporting of

cases. The Race Equality and Community Cohesion Strategy recognized the important role of faith communities in building community cohesion. An interfaith framework was due to be published; that would facilitate dialogue, good relations and collaborative social action, since it was important to strengthen society by bringing together people with different backgrounds, supporting people who contributed to society, and taking a stand against racism and extremism.

61. Mr. NYE (United Kingdom) said that those who directly or indirectly encouraged terrorism should be prosecuted. Those who glorified terrorism created a climate in which terrorism was likely to flourish. Guidance on the prosecution of acts encouraging terrorism had been issued by the Crown Prosecution Service. The restrictions that United Kingdom legislation placed on freedom of expression were necessary for the protection of national security. There was no evidence that the new legislation curbed legitimate freedom of speech. Although there were no official records of the number of people who had been prosecuted for encouraging acts of terrorism, there had been at least one conviction.

62. Mr. BRAMLEY (United Kingdom), responding to question 24, said that the four defendants prosecuted for the so-called “cartoon protests”, and Nick Griffin, the leader of the British National Party, had all been treated in the same way by the criminal justice system. All five cases had been reviewed by the Crown Prosecution Service in accordance with the Code for Crown Prosecutors. All five defendants had been prosecuted in the courts and had their cases considered by different juries, who had found each of them guilty. In 1998 Mr. Griffin had been found guilty of breaching the Criminal Justice and Public Order Act, 1986, relating to incitement to racial hatred, through his editorship of a publication. On that occasion he had been sentenced to nine months’ imprisonment and fined £2,000. In the case against him in 2006, the jury had found him not guilty of two of the charges and had been unable to reach a verdict on the other two charges. The Crown Prosecution Service had announced that it would seek a retrial, which had resulted in an acquittal on 10 November 2006.

63. The Government took all forms of hate crime very seriously. Work was ongoing on the cross-governmental Race for Justice programme, aimed at achieving agreement on a definition of monitored hate crime. The Government recognized that hate crime could be motivated by a broad range of factors, and that data therefore needed to be collected nationally. Criminal justice agencies had begun to collect data on monitored hate crimes.

64. Ms. HARDY (United Kingdom), turning to question 25, said that the Official Secrets Act was not intended to prevent journalists from publishing articles, but rather to create criminal offences relating to the unlawful disclosure of certain types of official information. State employees or government contractors who had made damaging disclosures relating to intelligence, security, defence or international relations without having lawful authority to do so could be prosecuted under the Act. The prosecuting authorities did not record convictions classified by profession, but there was no evidence of cases against journalists or publishers of any kind. The Crown Prosecution Service had a code of principles to be followed when deciding whether to prosecute a case; that code was published on the Service’s Internet site. Public interest must be considered in each case, and the factors for and against prosecution must be considered thoroughly and fairly. Public servants who believed that they should report a matter of public interest were able to do so in a number of ways that afforded them protection in their employment.

65. On question 26, she said that United Kingdom law provided for a number of defences for journalists and others to use. Persons sued for libel could be defended by proving that what they had written was true, constituted fair comment on a matter of public interest or was privileged. “Reynolds privilege” was a privilege that could be applied to journalists in the event that the material published was of genuine public interest and the publisher had taken the necessary steps to ensure that the information published was accurate and fit for publication. The House of Lords had emphasized in the case of *Jameel v. the Wall Street Journal* that the test of responsible journalism should be applied in a practical and flexible way, taking into account all circumstances relevant to the publication.

66. Mr. NYE (United Kingdom), responding to question 27, said there had been no evidence that anti-terrorism legislation had restricted freedom of expression or freedom of association. Anti-terrorism legislation was not aimed at any particular religious or racial group, but rather at terrorists from any background. When exercised appropriately and proportionately, the powers provided for in anti-terrorism legislation were useful for curtailing terrorist activity. The British Parliament had been clear, in passing the Terrorism Act, 2006, that powers were required to tackle the climate of extremism. Statements and behaviour that glorified terrorism and extremism were considered unacceptable. The provisions of the Covenant allowed for proportionate restrictions for the purposes of national security.

67. Mr. DAW (United Kingdom), referring to question 28, said that detention of children under the Immigration Act was not taken lightly, but was considered necessary under some circumstances in order to maintain effective immigration control. Children could be detained in two limited circumstances: as part of a family group whose detention was considered necessary, or exceptionally when unaccompanied and alternative arrangements were being made. The detention of families with children would generally occur in the context of their removal from the United Kingdom, and would be timed to occur as close as possible to the planned removal date in order to minimize the duration of detention.

68. The Government would prefer families who had no lawful basis to stay in the United Kingdom to return to their countries of origin voluntarily, and was therefore keen to develop assisted-return programmes and explore alternatives to family detention, such as hostel accommodation. In the event that a family refused to return voluntarily, they must be removed by force, which required them to be detained. Where such action proved necessary it was preferred not to separate children from their parents, but rather to detain them in a family unit in a detention centre, which was separate from the rest of the centre, and had its own dining facilities. The accommodation was based on family rooms, which enabled family life to continue as far as detention allowed. The centres were required to have robust child-protection policies and provide a range of family-oriented facilities, including children’s recreational and educational activities.

69. Ms. DICKSON (United Kingdom) said in reply to question 29 that although the status of illegitimacy had not yet been formally abolished in law in the Falkland Islands, the Falkland Islands Family Law Reform Ordinance, 1994 removed legal discrimination against children born outside marriage with regard to maintenance and inheritance. The Falklands legislature was considering provisions that would result in automatic acquisition of parental responsibility for minors by a person registered as the minor’s father, regardless of whether he was married to the child’s mother. Those provisions would provide the same protection as a

child born of married parents. The United Kingdom had drawn the attention of the Falklands Government to the Committee's concern that the status of illegitimacy had not been formally abolished. A new draft constitution had recently been agreed with representatives of the Falkland Islands and contained a comprehensive non-discrimination provision, in accordance with which all other Falklands laws would have to be interpreted.

70. Mr. KISSANE (United Kingdom), responding to question 30, said that his Government was considering carefully how to address the issue of prisoner enfranchisement. It took very seriously its duty to comply with the judgements of the European Court of Human Rights. Account must be taken of the practical considerations of prisoner enfranchisement for courts, prison services and the organization of elections. The Government was seeking a solution that fully respected the judgement of the Court while fitting the context of the United Kingdom. It had published a first-stage consultation paper in December 2006, and that stage of consultations had been completed in March 2007. The Government was committed to a second stage of consultations, which would lead to a final decision on detailed implementation in the context of developing thinking on citizenship and constitutional rights and responsibilities. The debate on prisoner enfranchisement was taking place against the background of a wider debate on United Kingdom citizenship.

71. Turning to question 31, he said that the sixth periodic report had been sent to the seven legal-deposit libraries of the United Kingdom and been published on the Internet site of the Ministry of Justice. The texts of periodic reports could be published in the Official Gazette and in the press and placed in public libraries and schools.

72. Mr. IWASAWA, referring to question 17, asked whether anyone had been deported from the Cayman Islands for being "destitute" or "undesirable" in the past 10 years. He wondered whether the Government had any plans to amend section 89 of the Immigration Law.

73. He wished to know whether the Government intended to incorporate article 26 of the Covenant into domestic law, since the Human Rights Act did not contain a comparable provision on non-discrimination.

74. Mr. O'FLAHERTY, speaking on question 18, asked how the issue of possible detention for 48 hours without access to a lawyer under the Terrorism Act could be resolved. He wondered whether steps were being taken to expand the system of duty lawyers to ensure that a trusted cadre of lawyers was on standby and thus render that provision of the Terrorism Act obsolete. He asked whether the Government agreed with the view of the Parliamentary Joint Committee on Human Rights that efforts should always be made to secure the presence of a duty solicitor from the outset of a suspect's deprivation of liberty, unless the need to interview the suspect was so urgent that a solicitor would be unable to get to the place of detention in time.

75. On the issue of ASBOs, he pointed out that the provisions of the Covenant and the European Convention on Human Rights were not always congruent, and it should not be assumed that articles of both instruments dealing with the same issue had the same scope. The fact that litigants had failed to plead under the Human Rights Act on issues of concern to the Committee did not mean that there was not a problem under the Covenant, since the Human Rights Act was based on the European Convention. Since the civil and criminal aspects of ASBOs were so closely linked, they could both be considered in the context of article 14 of the

Covenant; article 24 was implicated when minors were involved and article 17 was relevant when issues of privacy were raised. He asked how the term anti-social behaviour was understood, and whether the elements of harassment, alarm and distress that constituted anti-social behaviour were cumulative. Given the implications of ASBOs for the human rights of those subject to them, he wondered what human rights guidance and training were given to the local authorities and others responsible for issuing ASBOs. He asked what rights a person likely to be subject to an ASBO had, and how those rights were protected. Since 40 per cent of persons subject to ASBOs were minors, he wished to know how their best interests were protected from the beginning to the end of the process.

76. Since there were no reporting restrictions on those who were the subject of ASBOs, he wondered how the Government ensured that the reporting procedure remained compatible with article 17 of the Covenant on privacy. He asked why the need to protect certain categories of information in order to avoid violating the privacy of persons subject to certain restriction orders did not apply to those subject to ASBOs. Why were individual support orders for children not imposed as a matter of course with ASBOs applied to minors, in order to protect the best interests of the child?

77. Paragraphs 150 and 152 of the State party's written replies, which described the approaches to dealing with children in the justice systems in England and Wales, and Scotland respectively, contained conflicting information and he wondered whether there was a fundamental difference between the approach to children in the penal system in England and Wales, and that in Scotland.

78. He expressed concern regarding the view of the Parliamentary Joint Committee on Human Rights that the best interests of the child were not necessarily the primary consideration when assessing the possible extension of the detention of a child in a deportation situation beyond 28 days. A Member of Parliament had said that, in cases of family detention, parents often sought to impede the removal process, and the limitation of detention periods could be seen to be a reward for such behaviour. He asked whether that consideration was given priority over the best interests of the children concerned.

79. While information had been provided on the dissemination of the State party's periodic reports, he wished to know whether the Committee's concluding observations were disseminated in the same manner. He wondered whether any consideration had been given to conflating consultations on the Universal Periodic Review procedure under the Human Rights Council with broader consultations on the treaty body reporting system.

80. Mr. BHAGWATI, turning to question 20 of the list of issues, asked whether the 25 cases of trial without a jury that were pending under the Diplock court system would be tried with juries, since the Diplock system no longer existed and the new trial system presumed that all trials would be jury trials, unless they met the defined test set out by section 1 of the Justice and Security (Northern Ireland) Act, 2007. He asked whether there had been any prosecutions for encouraging acts of terrorism. He wished to know the practical effect of the entry into force of the 2006 Racial and Religious Hatred Act, whether any offences had been recorded under the Act and to what effect. Were any non-legislative measures being taken to change public attitudes and address racist and xenophobic tendencies? On question 25, he asked whether a court could override the Official Secrets Act in the event that it found a claim for privilege to be unfounded.

81. Mr. AMOR requested more factual information on religious freedom, rather than examples of legislative provisions. He wished to know why the crime of blasphemy had not been abolished in Scotland, and requested a more detailed explanation of the situation of blasphemy in Northern Ireland.

82. Although the delegation had spoken about Islamophobia, insufficient information had been received on the extent of that phenomenon in the United Kingdom. The Committee would therefore appreciate more information on the number of recorded cases of Islamophobia. He sought clarification concerning the efforts of the Government to tackle discrimination against Muslims, and would welcome statistics on prosecutions and sanctions against British Muslims, which had increased substantially since 2001. He also requested statistics on the number of related prosecutions involving restriction of the right to freedom of expression and freedom of association, especially when associated with terrorism.

83. He found the United Kingdom's attitude to religious extremism and Islamophobia perplexing. On the one hand, it maintained its reservation to article 20 even though, in his view, reservations to that article could be perceived by some as authorization to incite discrimination, hostility and violence and so should not be permitted. On the other hand, extremism had been allowed to grow unimpeded. Although laws against terrorism had been developed, it was not clear whether it could be effectively contained. Extremist speech should not advocate violence or hatred but it could produce that effect, and its nuances were not always easy to grasp. Various forms of extremist speech continued to be used in religious schools, including Islamic schools, sometimes intelligently. It was important to develop a non-discriminatory and tolerant discourse in schools.

84. The United Kingdom had long welcomed extremists. The Archbishop of Canterbury had recently paved the way for the approval of religious codes and the Lord Chief Justice had stated that there was no reason not to apply such codes, including sharia law, as long as they did not conflict with British law. It was unclear which sharia was under discussion, as interpretations varied widely within the highly diverse community of Muslims worldwide.

85. The ambiguous message of the United Kingdom appeared to encourage, in an objective way, a kind of extremism that was not necessarily in the interests of British Muslims. The identification of Muslims with extremism and terror was supported by the media and official public discourse. Islamophobia was indisputably growing but was not being contained; nor was there the will to contain it. A tense atmosphere of suspicion and mistrust was being engendered that would promote the politics of identity and tend to create an Islamic ghetto. There was a fine balance between allowing freedom of expression and limiting extremism. To state, in good faith, that sharia law should be taken into consideration paved the way to human rights violations. The question of polygamy was one highly contentious issue. It was necessary to consider the implications of such statements for human rights. It would be helpful if the delegation would provide clarification and further information on that point.

86. Ms. WEDGWOOD associated herself with Mr. Amor's statement. The human rights organization Article 19 had expressed concern in its recent report regarding the issue of freedom of speech on political and social matters and the scope of British libel law; it claimed that the law

discouraged critical media reporting of litigious individuals and encouraged the media to settle rather than defend stories, even if known to be true. Free speech was integral to democracy and the situation in the United Kingdom gave rise to a number of concerns.

87. The absence, under English civil libel law, of any enhanced pleading requirement for the plaintiff meant that the defendant must provide admissible evidence that the contested assertion was true. Admissible evidence was, however, a highly restricted notion. Moreover, there were no exceptions for public figures, even if an assertion concerned the public acts of a public official. That affected the ability of individuals to act as democratic citizens and to question the actions of public officials. Furthermore, the plaintiff faced no financial risk, whereas the defendant was liable to pay the plaintiff's frequently considerable costs and fees if unable to prove the truth through the highly restricted range of admissible evidence: truth was not a real defence when it had to be proven within the rules of admissibility.

88. The broad definition of publication posed a further problem, as it covered anything that might be seen by chance by a British citizen and so had extraterritorial effect. The standards that had been established, such as acts in the genuine public interest or acts of responsible journalism, gave the courts considerable discretion. The Committee had consistently criticized the use of criminal libel; civil libel had the same effect of chilling political speech. A democracy with punitive civil libel laws which believed that free speech was a fundamental right that secured other rights should view punitive civil libel laws as a cause for concern.

89. Mr. JOHNSON LOPEZ said, with reference to question 30, that he had noted with satisfaction that the general provisions of article 25 had been adopted and applied. He asked the delegation to indicate whether the government authorities and the Department of Constitutional Affairs had any particular reason for maintaining the ban on the voting rights of convicted felons.

90. With respect to question 31, he underlined the importance of the far-reaching, universal approach of the British authorities in publicizing the Committee's concluding observations. However, he wished to know whether a greater number of institutions and, in particular, NGOs would be invited to contribute to future reports, in order to ensure that there was objective input. He also wished to know why the Anti-Discrimination Act, 2001 (No. 2 of 2001) had not yet been applied in overseas territories.

91. Ms. CHANET said that Lord Phillips had provided, more specifically than the Archbishop of Canterbury, for the possibility of applying sharia law to family and marriage issues. She wondered whether it was legally possible for the United Kingdom to apply sharia without first incorporating it.

92. The Terrorism Act, 2006 had created the offence of encouragement of terrorism. Under the Act, terrorist offences were criminal offences. The elements of those offences were highly subjective and included direct or indirect encouragement of terrorism, although the European Court of Human Rights had determined that a direct connection must be established between any words used and the resulting violence. It was difficult to establish not just the words used but their effect on specific individuals. She wished to know whether all the derogations applied when an offence was detected, in particular the extended period of pre-charge detention of suspects.

93. Mr. LALLAH said he shared the concern expressed by Mr. Amor and Ms. Chanet regarding the statements made by the Lord Chief Justice on sharia law. Openness to other cultures and religions should not undermine the basis of a society that sought to be diverse and to protect and promote basic human rights. He had previously observed that the United Kingdom had been too Eurocentric when it had decided to incorporate the European Convention on Human Rights into its law. The Convention did not contain the kind of provisions embodied in articles 3 and 26 of the Covenant, which were the bulwark against sharia law and all other discriminatory provisions against women. The constitutions given by the United Kingdom to its former colonies prior to 1966 all had made provision for combating discrimination, but all had made particular derogations with respect to personal rights. Lord Phillips was aware that sharia law discriminated against women in marriage, divorce, inheritance of property and testimony. He asked whether the ultimate aim of the United Kingdom was to practise such discrimination and emphasized the importance of articles 3 and 26 for the protection of women, at least, in society.

94. As to article 19, he found the delegation's remarks to be an artificial way of interpreting the substance of the relevant rights. In matters of criminal conduct, it was necessary to describe a specific kind of conduct in order to avoid a subjective value judgement. He wished to know why the United Kingdom's approach to interpretation of the Covenant was flawed in that respect.

95. Ms. PALM agreed with the comments made by Mr. Lallah. With respect to question 30, the delegation had said that the United Kingdom always sought to implement the judgements of the European Court and had an excellent record in that regard. However, the United Kingdom had incorporated the European Convention but not the Covenant, article 25 of which was broader than the Convention as it gave every citizen the right and opportunity, without unreasonable restrictions, to vote. It would be helpful to know whether the second consultation paper to be published by the United Kingdom would not only focus on the compatibility of the new legislation with the European Convention, but also ensure that the proposed legislation was compatible with article 25 of the Covenant.

The meeting rose at 12.55 p.m.