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Seventy-third session

SUMMARY RECORD OF THE 1961st MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 17 October 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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GE.01-45225 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/UK/99/5; CCPR/C/73/L/UK)

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 continue its responses to the supplementary questions addressed to it at the previous meeting.

3. Mr. de PULFORD (United Kingdom) said that two questions remained outstanding from the previous meeting: that of Mr. Shearer and others about the human rights training of the judiciary, particularly in the lower courts and that of Mr. Yalden about the human rights commission. With regard to the former, he had encouraging news to offer the Committee. Even before the Human Rights Act had come into force in October 2000, the Government had engaged in its biggest ever training programme, at a cost of some £4.5 million. All 30,000 magistrates, who presided over the lowest level of the court, as well as all judges, had received human rights training. While the course focused on the European Union's own treaty, other international obligations, notably those under the Covenant, had been taken fully into account.

4. The current situation regarding the establishment of a human rights commission was that such a commission already existed in Northern Ireland, standing alongside the Unified Equality Commission. The Scottish Government was currently considering the outcome of consultations with a view to deciding whether or not to appoint a human rights commission and, if it were to do so, what form it should take. In Westminster, Parliament had set up a joint committee of both Houses on human rights which had invited evidence on the question of a human rights commission for England and Wales as well as one for the entire United Kingdom and proposals on what its form and functions should be. The Government, for its part, had made it clear that it had an open mind. A major question was what model should be adopted and whether the commission should be an over-arching body with the other commissions subsumed in it. One model was that of Northern Ireland, where the commission stood alongside a unified equality body. Another model was one whereby there should be a human rights commission and separate equality commissions. That solution seemed to enjoy the greatest favour among NGOs in England and Wales. The Government's view was not yet formed on what was a difficult and complex question. Consideration remained very much alive, however, and he hoped that it would soon be possible to report progress, certainly in time for the next report.

5. Ms. MacNAUGHTON (United Kingdom) said a question had been asked about where responsibility lay for ensuring compliance with various international obligations. Within the Government, in addition to the national institutions and courts, the leading responsibility for compliance with international obligations was split between the Foreign and Commonwealth Office, which was clearly in the lead in matters of international relations, and the

Lord Chancellor's Department, of which she was a member and which dealt with domestic matters. It was a matter of record that the Lord Chancellor, who had been one of the main architects of the Human Rights Act, took a personal and serious interest in the human rights agenda and that he was delighted to have responsibility within the Government. He would undoubtedly press forward in the desired direction.

6. Ms. STEWART (United Kingdom) noted that Mr. Yalden had asked for clarification regarding that provision of the Protection from Harassment Act which required a victim to have been put in fear on more than one occasion. To answer that question, it was necessary to look back at the history of the legislation and the reason for its introduction. The Act had been introduced in response to concern about the increasingly common phenomenon of stalking, where one individual caused distress or alarm to another by engaging in a particular course of conduct over a period of time. The conduct in question might appear harmless when taken in isolation but as part of a pattern could take on a different and more sinister character. The concern was that the law did not provide adequate protection against such behaviour. Individual acts that caused harassment or alarm could be dealt with under the criminal law but the penalties available were not sufficiently severe. The Protection from Harassment Act introduced a novel procedure - a restraining order, which could impose quite significant restrictions on the liberty of an individual - as well as severe penalties for breach of its provisions. It was right that measures of that kind should be imposed only in response to seriously troubling behaviour, in other words, a course of conduct rather than an isolated act.

7. Ms. CLOUDER (United Kingdom) said that a number of questions had been asked about instances of discrimination. Several members of the Committee had referred to religious discrimination. Following the terrorist attacks on 11 September 2001, some people in Britain had sought to stir up hatred against members of religious groups, especially Muslims. There had also been attacks on Muslims, or people who appeared to be of the Muslim faith, and on mosques. The Prime Minister and one Home Secretary had both made it clear that the United Kingdom had no argument with Islam or Muslims and that it was unacceptable that innocent people should be subjected to hatred because their religion was wrongly equated with terrorist activity. The Government had therefore decided that measures to tackle religious hatred should be introduced in an emergency bill. It was currently considering proposals for legislation that would make it a criminal offence to incite hatred against members of a religious group, expanding on the current law on incitement of racial hatred contained in the Public Order Act of 1986. The Government was also considering proposals to extend existing racially aggravated offences to cover offences motivated by religious hatred and to institute higher maximum penalties. It was hoped to introduce that legislation by the end of 2001.

8. Reference had been made to the apparent confusion between racial and religious groups. She explained that "racial group" was the term used under the Race Relations Act. Its interpretation, however, was entirely a matter for the courts, which had interpreted and continued to interpret the term widely. Some religious groups, such as Jews and Sikhs, were covered by existing laws on incitement of racial hatred as a result of decisions made by the courts. That was on the basis, however, of those groups also having a distinct ethnic origin. Other religions that did not have distinct ethnic origins, such as Christianity or Islam, were not protected by the existing law as currently interpreted. The new legislation would end that anomaly.

9. In response to the questions concerning religious education in schools, she said that religious education was compulsory in foundation schools in England. In most grant-maintained schools, the locally agreed syllabus must reflect the mainly Christian religious tradition of Great Britain, while taking account of the teaching and practices of the other principal religions represented there. Syllabuses must not be designed to urge a particular religion or belief on pupils. Parents had the right to withdraw their children from religious education classes if they wished to do so.

10. The Government welcomed the involvement of faith-based organizations in education. The number and variety of schools within the State system supported by the churches and other major faith groups had increased. For the first time, Muslim, Sikh and Greek Orthodox schools had been brought inside the State system and were being funded on the same basis as Church of England and Catholic schools. In Northern Ireland, worship in State schools must be non-denominational. A religious education syllabus had been approved by the four main churches and made compulsory for all pupils in grant-aided schools from September 1996. In Scotland, pupils were provided with a broad-based curriculum giving a central place to Christianity as the main religious tradition of Scotland, while also introducing pupils to other religions for reasons of breadth and balance and the encouragement of tolerance and respect for the views of others. The Government looked forward to participating in the Consultative Conference on Religious Tolerance and Education to be held shortly in Madrid.

11. As to the Government's position regarding discrimination based on sexual orientation, some key changes had been made. Parity of treatment had been achieved for the first time through the introduction of a common age of consent. The immigration rules had been changed to allow long-term unmarried couples of different or the same sex the same rights as married couples. The United Kingdom Government and the devolved administrations were also currently considering how best to implement the Employment Directive. The need was recognized for coordination to ensure that new legislation on sexual orientation was coherent and that it had a real impact on the ground. A further issue in that connection was section 28 of the Local Government Act 1988, which had been introduced to ensure that local authorities did not intentionally promote homosexuality. The Government believed that it was an unnecessary piece of legislation which promoted prejudice and insulted a section of the community, and was therefore committed to its repeal in England and Wales. The Local Government Act did not apply to Northern Ireland and there were no plans to introduce similar legislation. A similar provision had already been repealed in Scotland.

12. In response to questions about transsexual people, she said that in April 1999 the Home Secretary had set up an interdepartmental working group whose remit was to consider, with particular reference to birth certificates, the problems experienced by transsexual people, with due regard for measures taken in other countries to deal with the issue. The working group's report had been presented to Parliament in July 2000 and the Government was currently considering how to take the matter forward. Any legislation on devolved matters would be for the new Scottish Parliament or the Northern Ireland Assembly.

13. She thanked Mr. Yalden for his observations on international experience with regard to women and combat. It was right and proper that the Government should consider international experience in that respect and it would be doing so in its review.

14. Ms. CLARKSON (United Kingdom) said that Mr. Shearer had asked what was being done to ensure that terrorist suspects were not at risk of treatment contrary to articles 6 and 7 of the Covenant. Careful consideration was given to any representations to the effect that on return to a particular country an individual faced the risk of treatment contrary to those articles. If a decision was made, nevertheless, to exclude an individual, he or she had the right of appeal to the Special Immigration Appeals Commission, an independent judicial body which heard appeals in national security cases. There was also a right of appeal to the Court of Appeal on a point of law. The Government remained absolutely committed to the principles of articles 6 and 7.

15. Mr. STEPHENS (United Kingdom) said that Mr. Kretzmer had asked a question about the recent judgement of the European Court of Human Rights regarding killings by members of the security forces. That judgement had found various deficiencies in the independence of the investigations and in some procedural aspects of the inquests into those deaths. It had not, however, found that individuals had been unlawfully killed by the security forces. The Government did not intend to appeal the judgement and would pay the compensation ordered in due course. Many of the deficiencies found had already been addressed and remedied by the Police Ombudsman. An entirely independent investigation would be carried out into all use of force by the police, whether lethal or not, and any discharge of a firearm would be investigated by the Ombudsman, who had full powers to recommend disciplinary action or criminal charges. The Government was still considering the procedure regarding inquests into deaths but it did recognize that changes were needed and would shortly put forward a package of measures to the Committee of Ministers of the Council of Europe.

16. Regarding allegations of collusion in murder by the security forces, with special reference to the cases of Patrick Finucane and Rosemary Nelson, he said that the Government took all unresolved murders in Northern Ireland extremely seriously. It accepted the importance of ensuring that the security forces upheld human rights standards to the full and it recognized that the issue of confidence in those forces remained to be addressed. The recommendations of the Patten committee were still being studied. The Government's first priority was to bring those responsible for the murders or involved in them to justice. In the Finucane case, the latest investigation by Sir John Stevens had resulted in a charge of aiding and abetting murder which would shortly come before the court. In the Nelson case, a very active investigation was still going on. Some 8,000 individuals had already been interviewed and some 24,000 documents seized. A number of arrests had been made but no charges had yet resulted. Several elements connected to the case, including the handling of the threats to Ms. Nelson, were being investigated by the Ombudsman.

17. The Government had not ruled out a public inquiry into either of those cases, although such an inquiry would carry the risk of prejudicing criminal proceedings. It believed, therefore, that it was right to pursue the current investigations as far as possible, but the option of a public inquiry remained open. A proposal had emerged from discussions with the Irish Government and the main political parties that an independent judge of international standing should be appointed. It was recognized that a number of issues remained to be dealt with and the judge would accordingly have access to all the information in the hands of the public authorities. The Government hoped that such a full review would restore confidence but, if it did not do so, the

judge would have the power to recommend a full public inquiry which the Government was committed to accept. No judge had yet been appointed but discussions were continuing between the two Governments.

18. In response to Mr. Kretzmer's question about the Northern Ireland human rights commission he explained that its establishment was part of the Belfast Agreement, and its task was to review the relevant laws and procedures and to make recommendations to the Government as necessary. The powers granted to it had been fully implemented. The report forming part of its initial remit was currently under consideration.

19. In response to Ms. Medina Quiroga, he said that the "Diplock courts" remained justified in Northern Ireland, although they were kept under constant review and safeguards had been instituted. The Criminal Cases Review Commission dealt with possible miscarriages of justice wherever they arose, throughout the United Kingdom and not just in Northern Ireland. Only two cases of miscarriage of justice had been found in relation to Northern Ireland, and only one had been connected to the "Diplock courts".

20. Ms. MacNAUGHTON (United Kingdom) said Mr. Lallah had suggested that an inter-party commission should be formed to act against the incitement of religious hatred. That was a very interesting suggestion and politicians certainly bore a great responsibility in that respect. Ms. Clouder had already referred to the statement by the Prime Minister and his colleagues on the need to avoid stirring up hatred. Action was being taken to make the incitement of hatred against members of religious groups a serious offence. The wider powers being established would also cover the incitement of hatred against overseas groups. Fair comment would not be put at risk by the new measures and the need to safeguard the freedom of the press was acknowledged. The Government had concluded that, for the time being, the best course would be to rely on self-regulation. If additional measures became necessary, the requisite arrangements would be made.

21. The CHAIRPERSON invited the members of the Committee to put any supplementary questions they might have.

22. Mr. KRETZMER thanked Mr. Stephens for the detailed replies to his questions. On one further point, he would like to know whether there had been any investigation of allegations that the Force Research Unit (FRU) had been involved in the murders.

23. Mr. LALLAH noted that it had been stated that a review of the Government's human rights obligations would only take place once the Human Rights Act had been fully implemented. As he understood it, the Act had already come into force, and so he did not see how there could be any obstacle to a review. He was also not clear as to how an Act of Parliament could have primacy over common law as interpreted by judges. He would like to know why the substance of Protocol No. 12 to the European Convention had not been included in the Act, and whether the Act was also applicable in Scotland.

24. Mr. STEPHENS (United Kingdom), in reply to Mr. Kretzmer, said that there had been a number of investigations, including the original Stevens inquiry, which had resulted in 44 convictions. Allegations of collusion in relation to the FRU had prompted the reopening of the investigation into the murder of Patrick Finucane. Any further allegations would be viewed extremely seriously and dealt with according to procedures established by law.

25. Mr. de PULFORD (United Kingdom), replying to Mr. Lallah, said that when the Government had announced that it would initiate a review of its obligations under human rights instruments in relation to implementation of the Human Rights Act, it had meant that it would contemplate further steps once it had gained sufficient experience of the operation of the Act. Before the Act had come into force there had been a great deal of speculation about its likely effects in terms of existing legislation and practice, and the incorporation of the Act into domestic law had represented a major constitutional change. He regretted that he could not yet state when the review was to take place.

26. In reply to the question concerning common law, he explained that the Act worked in two ways: it provided the courts with the power to strike down or, in the case of Acts of Parliament, to declare incompatible certain legislation, and it also placed a duty on the courts to interpret all legislation as far as possible in a way compatible with Convention rights. That obligation went well beyond existing common law.

27. The reason why Protocol No. 12 of the Convention did not form part of the Act was that it had not been drafted until after the Act had been passed. However, the Secretary of State had the power to order the addition of any protocols the United Kingdom might decide to adopt. In principle, the Government was in favour of a free-standing non-discrimination provision similar to that contained in article 26 of the Covenant. For the present, it was not happy with the text of the Protocol and accordingly was not willing to ratify it, but it might well be that its doubts would be dispelled once the Act began to be implemented.

28. The Act applied throughout the United Kingdom, including Scotland. Courts in Scotland did not have discretion to legislate against Convention rights, and thus any law adopted by the Scottish Parliament which was found by the courts to be incompatible with those rights would have no validity. To the extent that Covenant rights were covered by Convention rights, the Covenant enjoyed identical protection. To the extent that they went beyond those of the Convention, they were also protected, in that the United Kingdom sought to comply with its provisions even though the Covenant had not been formally incorporated into domestic law.

29. The CHAIRPERSON invited the delegation to respond to questions 14-29 of the list of issues.

30. Ms. MacNAUGHTON (United Kingdom), in reply to question 14, said that rubber bullets were not used in any part of the United Kingdom. Plastic baton rounds could be used, but only where other methods of restoring order had been tried and failed, and the Government would prefer to avoid resorting to that method. She pointed out that in Northern Ireland the police and armed forces continued to face the threat of terrorist attack, and that 302 police

officers and 655 military personnel had been killed since the start of the “troubles”. For that reason, the use of plastic baton rounds might be required in order to protect the lives of the security forces and to prevent serious public disorder.

31. Both the army and the Royal Ulster Constabulary were obliged to follow strict guidelines for the use of plastic baton rounds, and even more stringent requirements had been introduced in April 2001, including a requirement to report to the independent Police Ombudsman on every occasion when a round was used. Following such a report, the Ombudsman would decide whether it was in the public interest to launch an investigation.

32. On question 15, she said there was no reliable evidence on which to form a judgement as to whether persons with complaints preferred civil proceedings to the existing police complaints system, and if so for what reason. It was true that different rules of evidence and a lower standard of proof applied in civil cases than in any criminal proceedings which might follow from use of the complaints system, and that such cases allowed for the possibility of civil remedies.

33. Statistics of civil claims had been collected nationally only since 1997 and were not yet comprehensive. In the period 1998-1999, over 11,000 civil claims had been received by those of the police forces in England and Wales which had collected the information, and a similar number had been received the following year. However, those statistics were not a reliable indicator of trends in civil proceedings brought by members of the public, because they included not only complaints against the police but also internal claims brought by the police themselves.

34. Responding to question 16, she said that in cases where a person’s extradition had been requested for an offence carrying the death penalty in the requesting State, it was the Government’s practice to make that extradition conditional upon receipt of an assurance that the death penalty would not be imposed or, if imposed, would not be carried out.

35. In reply to question 17, she said that in England and Wales the previous year the Prison Rules had been amended to include new disciplinary offences, notably racially aggravated criminal damage and the use of racist language, and all establishments were now required to keep a record of racist incidents. All reports of such incidents were discussed by the prison’s race relations management teams at regular meetings. In 1999 and 2000 there had been just under 2,000 reported racist incidents. From July to December 2000 the number of such incidents appeared to have doubled, possibly reflecting a better understanding of the definition of a racist incident and of the importance of reporting it.

36. In Northern Ireland, prison officers received training in equality and human rights, which included the principle that treating people differently on the basis of race or ethnic origin was unacceptable. In Scotland, the Scottish Prison Service had recently issued a revised race relations policy document, under which managers responsible for prisoner/visitor race relations issues were appointed to each prison. Concerning the results of the 1999 prison requests and complaints system review, she said that serious weaknesses had been identified. Too many trivial complaints were dealt with at too high a level, while on the other hand prisoners were discouraged from making formal complaints on serious matters. Prisoners were given inadequate information about how to complain, and procedures were slow and complex. Under

new procedures soon to be introduced, complaint forms would be made freely available for posting in locked boxes, to which only designated members of staff had access. Prisoners dissatisfied with the response to their complaint could appeal to the Prisons Ombudsman. The new procedures would be carefully monitored.

37. On question 18, she said that the United Kingdom was not currently able to withdraw its reservation to article 10, paragraph 2 (b), of the Covenant, but would reconsider the issue as part of its promised review of international human rights commitments.

38. Regarding question 19, she said that tagging and the home detention curfew were seen as reasonable ways of ensuring that the public was protected and as consistent with the Covenant. Fuller information had been provided in her delegation's written response.

39. Replying to question 20, she said experience had shown that it might sometimes be necessary to arrest a suspected terrorist without a warrant before sufficient evidence had been gathered to justify a charge. Under the Terrorism Act, the only ground for authorizing continued detention was the need to obtain evidence. As she saw it, arrest and detention on such grounds were not arbitrary, and there was no conflict with article 9 of the Covenant. Her delegation had already responded to the issues raised under question 21.

40. On question 22, she said that detained immigrants had access to free legal representation and could apply for bail. The Immigration Service was obliged to review reasons for detention on a monthly basis, and detention could be challenged before the courts by way of writ of habeas corpus or by judicial review. The asylum support service dispersed destitute asylum-seekers who had asked for accommodation. Support for such asylum-seekers was coordinated nationally, and they were dispersed around the country in order to alleviate the pressure on London and the south-east which would otherwise arise.

41. Turning to question 23, she said that any applicant claiming a risk of forcible female genital mutilation on return to her home country might qualify for exceptional leave to remain or for refugee status. Decisions would be taken on a case-by-case basis. Answers to questions 24 and 25 had already been provided.

42. On question 26, she said that the Official Secrets Act placed a duty on individuals in a position of trust not to make unauthorized disclosures about secrets in their care. Such a law was necessary to safeguard national security and was in accordance with the Covenant. It did not prevent individuals from reporting wrongdoing to the authorities.

43. In response to question 27, she said the Terrorism Act 2000 permitted the proscription of organizations involved in terrorism, whether or not they had links with Northern Ireland. Such proscription was subject to independent review. The right of peaceful assembly and freedom of association defined in articles 21 and 22 were subject to exceptions in national law which were necessary in the interests of security, public safety, public order, and the protection of the rights and freedoms of others. Such exceptions were seen as a legitimate and proportionate response to terrorist threats.

44. On question 28, she said that the Government felt bound by the decision of Parliament that convicted prisoners had forfeited their right to have a say in the way the country was governed. That temporary disenfranchisement was seen as a reasonable restriction within the terms of article 25. The Representation of the People Act 2000 permitted a remand prisoner to register as resident at the place where he was being held, and for that registration to be transferred. In addition, remand prisoners could register as electors at their normal home address.

45. Responding to question 29, she said the Government was committed to encouraging greater participation of under-represented groups in public life. A significant development was the extension of the Race Relations Act to cover all areas of government, and to make public authorities responsible for promoting racial equality. Equality-employment targets had been introduced in the public sector. In the civil service in England, Wales and Scotland, the proportion of staff from ethnic minorities had risen to 5.8 per cent in 2000, but they tended to be more highly represented in junior grades than in senior ones. A programme had been set up to double the representation of such groups in the civil service. Likewise, the Government was reviewing its systems of recruitment, training and promotion to ensure equality of access, and had introduced ethnic-minority support networks. In July 1999, race-equality employment targets for the Home Office had been introduced.

46. Lastly, the Government was committed to promoting equality between men and women in all sectors, and notably in public life. In 2000, 20 per cent of staff at senior civil service level had been women, and the aim was to increase that figure to 35 per cent by 2005. Provision of childcare, access to job sharing and flexible working arrangements would contribute to that goal. The number of women in public appointments had risen by 10 per cent since 1991, but they still held only 33 per cent of such appointments. A campaign was to be launched to encourage more women to apply. Likewise, legislation was planned to enable political parties to increase the number of women Members of Parliament.

47. Mr. KLEIN congratulated the delegation on its remarkable preparation for the discussion, which was evidence of a major effort by the State party to help the Committee in its task.

48. He associated himself with questions raised earlier by members of the Committee concerning the lamentable exclusion of the Covenant from the Human Rights Act, and concerning the investigation of incidents involving police officers or public officials. He was disappointed by the somewhat laconic response to question 18, and did not understand why reconsideration of the reservation concerned should have to be postponed until after an assessment of the Government's human rights commitments. It should not be a problem for a relatively rich country like the United Kingdom to make available separate jails for juveniles.

49. On question 22, he would be glad of more information on the situation following refusal of a request for asylum. Were the persons concerned informed of the availability of legal representation, and was there a legal obligation to provide such information? How were expulsions actually carried out, and what was done in cases where a person refused to leave? Where expulsion was not possible either because a country was not willing to accept a person or

because of the principle of non-refoulement, were those concerned held in detention, and for how long? Was that detention subject to review, and did such persons receive tolerated status or any kind of legal status after a certain period of time?

50. Concerning question 26, he appreciated that freedom of expression sometimes had to be restricted, but stressed that States parties should always strive to achieve a fair balance. The problem was that the Official Secrets Act could be used to intimidate journalists or others who had found evidence of wrongdoing by public officials. Under that Act, a defendant was not permitted to raise the defence that his disclosure was, or might have been, in the public interest. How often during the past five years had the Government made use of the Act to try to impede publication, by injunctions or other means, against former State employees, journalists, or television companies?

51. The language used in the Obscene Publications Act 1959 and the Theatres Act 1968 seemed to be somewhat archaic and out of step with contemporary attitudes. Terms such as "indecency" were unduly vague in a criminal law context. How many cases had been heard under the 1959 Act and how many convictions handed down during the period under review? How many theatrical productions had been shut down on the basis of the 1968 Act? Noting that local authorities were not bound by the decisions of the British Board of Film Classification, he asked how frequently decisions to censor or ban films were taken at the local level.

52. Mr. ANDO, referring to the State party's reservation to article 10, paragraph 2 (b), of the Covenant, asked whether it was applicable to England, Scotland and Wales in addition to Northern Ireland. Since ratifying the Covenant in the 1970s, the United Kingdom had repeatedly assured the Committee that it intended to consider withdrawal of the reservation. He wondered whether the delay was due primarily to the situation in Northern Ireland or to a theory that the mixing of juvenile prisoners with adults might in some cases prove beneficial.

53. With regard to the practice of electronic tagging as an alternative to custodial sentences, he appreciated the difficulty of striking a balance between undue interference with freedom of movement and ensuring that the general public or prospective victims enjoyed proper protection. He asked for clarification of the statement in the report that it would be open to a person who did not wish to be released to instead remain in custody. How effective was the tagging system in general and was it used to warn prospective victims of the approach of stalkers?

54. The Official Secrets Act was allegedly used to intimidate former State security officials who wished to disclose information in their possession. He referred in particular to the case of the former MI5 agent David Shayler, that of Tony Geraghty, against whom charges had been dropped, and that of Nigel Wilde, who had been acquitted owing to lack of evidence. Similar situations had arisen under the Contempt of Court Act 1981. To avert the need to resort to intimidation, he suggested that guidelines or criteria based on judicial precedent or administrative initiative should be established so that persons intending to disclose information could form a clear idea of the point at which they might be accused of endangering national security.

55. A related issue was that of striking a balance between responsible investigative journalism and legitimate claims to personal privacy. It would be interesting to hear the delegation's views on how journalistic excesses in that area could be prevented.

56. Mr. LALLAH, referring to the forthcoming legislation on action against terrorism in the context of Security Council resolution 1373 (2001), urged the head of delegation, in her capacity as Director-General in charge of Policy in the Lord Chancellor's Department, to bear in mind in that connection the United Kingdom's obligations under article 4 of the Covenant to ensure the protection of basic rights relating, inter alia, to the prevention of torture, arrest and detention procedures, due process and the rights of aliens.

57. With regard to the United Kingdom's reservation to article 10, paragraph 2 (b), of the Covenant, he noted that article 24 required the family, society and the State to ensure that children enjoyed such measures of protection as were required by their status as minors. That article might be invoked to strengthen the hand of those who advocated withdrawal of the reservation and segregation of juveniles from adults in prisons.

58. Referring to article 14, paragraphs 2 and 3 (g), of the Covenant, he said that the Human Rights Committee of the Bar of England and Wales had expressed concern about violations of the right to silence, especially in the light of the Investigatory Powers Act 2000, which apparently empowered the Home Secretary to order the tapping of communications between counsel and client, and allowed counsel for the prosecution to withhold material from counsel for the defence. The entire Act should, in his view, be reviewed to ensure that it complied fully with the provisions of article 14 of the Covenant.

59. Mr. RIVAS POSADA said he would welcome additional information on the rights of ethnic minorities, in particular their access to public service and participation in the conduct of public affairs. Existing low levels of participation could constitute breaches of article 25 of the Covenant in connection with articles 26 and 27. While commending State action to increase the percentage of ethnic-minority teachers and students at the various levels of education, he noted the persistent under-representation of minorities in political life, both in terms of participation in elections and in terms of election to national and local representative bodies. The number of Members of Parliament of ethnic-minority origin was unconscionably low for a multicultural and multi-ethnic society. The situation in the armed forces was even more perturbing. He was pleased to hear, on the other hand, that there had been a substantial increase in the representation of ethnic minorities in the civil service in recent years, partly in response to the recommendations of the Commission for Racial Equality.

60. Although he understood that it was difficult for the State to take direct action to promote political activity among minorities, it nonetheless had a responsibility to create a social environment conducive to their participation in the conduct of public affairs. Mounting racial tension in recent years might be partly attributable to ethnic minorities' sense of exclusion from important branches of public life. He would appreciate more up-to-date data on their representation in, for example, the armed forces, Parliament and the police force, and additional information on the relationship between the Government and the Commission for Racial Equality. To what extent, for example, did the authorities act on the Commission's recommendations?

61. Ms. MEDINA QUIROGA asked what action the State party was taking to protect the children attending Holy Cross primary school in Belfast, who had been so tragically affected by the situation in Northern Ireland.

62. With regard to the Prevention of Terrorism Act, she asked what proportion of applications to a judge for extension of the period of deprivation of liberty beyond 48 hours were turned down? What proportion of arrested persons were released without charge? What new provisions in that regard had been introduced in the Terrorism Act 2000?

63. Referring to the distinction between the treatment of arrested and detained persons in Northern Ireland and the rest of the United Kingdom, she asked why, in certain cases heard by the Diplock courts in Northern Ireland, the decision whether to grant bail was taken by the High Court rather than the judge. What were the implications in terms of the waiting period for the applicant and the different approach adopted in High Court hearings?

64. With regard to expulsion to countries where the threat of female genital mutilation or similar practices existed, she asked whether the adoption of a case-by-case approach meant that girls from such countries would not risk refoulement from the United Kingdom.

65. She stressed that guilt should not be inferred from the decision of a suspect to remain silent in the cases enumerated in paragraph 386 of the report. According to paragraph 391 of the report concerning jury trials, the decision on which court should try "either way" offences was made by magistrates. She wondered whether that procedure was compatible with the Covenant inasmuch as a person was normally entitled to be judged by a court designated by the law. She did not fully understand the consequences of such decisions and would appreciate some clarification. She understood from paragraph 396 of the report that the rules governing the disclosure of evidence by the prosecution in criminal cases had been changed. What were the grounds for the change and what were the results?

66. The delegation had indicated in its reply to question 21 that the regulations governing the arrest and detention of persons suspected of involvement in terrorist activities were broadly similar to those applied in other cases. However, according to the report, where the police had reasonable doubts that the presence of counsel could harm the investigation, they could deny access to counsel for up to 48 hours. She had serious doubts about the compatibility of that provision with the Covenant.

67. Mr. YALDEN queried the suggestion in the State party's written answers to the list of issues that the increase of almost 100 per cent in racial incidents in prison was due to more accurate reporting. He wondered whether it might be related to poor representation of minority racial groups on prison staff. Had any thought been given to the creation of an office of prison ombudsman?

68. He noted from the reply to question 22 that the decision to detain asylum-seekers could be challenged. While he appreciated that the delegation was unable to provide details of the new legislation to be tabled in Parliament, he would be grateful for any information it could provide on the changes contemplated. Although asylum-seekers were not bound to agree to dispersal, he doubted whether a destitute alien would have a great deal of choice in the matter. Many

prestigious and knowledgeable NGOs had expressed concern about the voucher system because of the difficulties asylum-seekers would encounter in using vouchers to purchase basic necessities. The system was incompatible with the principle of decent treatment for foreigners and difficult to reconcile with the provisions of the Covenant.

69. With regard to voting rights for prisoners, he submitted that the consequence of conviction by a court was incarceration and not other forms of punishment. The Queens Bench Division of the High Court of Justice had stated that there was clearly an element of punishment in the deprivation of voting rights. According to article 10, paragraph 3, of the Covenant, the essential aim of incarceration was the reformation and social rehabilitation of prisoners. He was at a loss to know how depriving them of the vote would serve either of those ends.

70. Mr. KRETZMER said that an important element was missing from the statistics the delegation had provided in reply to question 17; he would like to know how many disciplinary actions had been brought against prison officials or prisoners accused of racist abuse, and what their outcomes had been. Secondly, while it was to an extent understandable that the United Kingdom Government should use the Official Secrets Act to prevent former government officials from disclosing certain information after they had left the service, the use of the Act to bring injunctions against newspapers seeking to publish such information when they received it was an entirely different matter. Such actions constituted a potential breach of article 19, paragraph 3, of the Covenant. A case in point had been the Government's attempt to prevent the publication of information received from a former official of the Force Research Unit. Moreover, he was disappointed at the delegation's reply that no wide-ranging inquiry had yet been carried out into the alleged links between the Unit and the murders of journalists in Northern Ireland. The issue was important, not only in the context of freedom of opinion, but also because the number of such unsolved killings had a crucial effect on public opinion.

71. After reading the lengthy treatment of the topic of prosecution disclosure in the supplementary report, he was still not sure why, under the United Kingdom system, the prosecution was not obliged, once a charge had been made, simply to submit all the material at its disposal to the defence so that it could decide for itself on the material's relevance; naturally, certain immunities relating to public order had to be incorporated into the process. Could the delegation provide further information on the differences between "used" and "unused" material, why a prosecution might seek to withhold material on public-interest immunity grounds, and why there was no appeal against a court's decision to approve such withholding?

72. He believed that the United Kingdom's continuing failure, since the adoption of the Human Rights Act, to introduce specific legislation banning all corporal punishment violated article 7 of the Covenant. The Government seemed content to let the courts decide on matters involving assault occasioning actual bodily harm, and in one recent case a stepfather who had beaten a child with a stick had been acquitted after relying on the defence of "reasonable chastisement"; the case had gone to the European Court of Human Rights, which had ruled that United Kingdom legislation had failed to protect the child in question from "inhuman or degrading treatment or punishment", in contravention of article 53 of the European Convention.

73. Mr. HENKIN associated himself with the questions asked by Mr. Yalden, Mr. Lallah and Mr. Klein on prisoners' voting rights, the length of time spent in prison by those to whom the principle of non-refoulement was applied, and the need for early and effective integration into United Kingdom legislation of a free-standing statement on equality before the law along the lines of that contained in article 26 of the Covenant. With regard to the information in the supplementary report about measures taken by political parties to encourage women voters, he observed that similar action in favour of ethnic minorities, not only in that arena but also in the employment sector - both private and public, would be fully in keeping with the spirit of the Covenant and would help avoid the further growth of a permanent underclass.

74. Although the British Government had, to some extent, provided a model for other countries in the restrictive measures it had applied in Northern Ireland in the name of national security, the degree of separation which had emerged between that region and the rest of the country raised questions about the very nature of a democratic society. He wondered whether it was not time, especially in view of the nature of the Terrorism Act 2000, for the Government to reconsider the situation.

75. The CHAIRPERSON, referring to question 18 of the list of issues, asked the delegation to explain why juveniles were not segregated from adults in prisons in Northern Ireland, given the widespread concern, particularly among jurists, at the high levels of recidivism that usually resulted from such a situation. Secondly, with regard to the Contempt of Court Act, he would like to know whether the truth of an allegation made against the judiciary was admissible as a defence against an action citing contempt of court. Thirdly, he asked the delegation to explain the circumstances in which a defence of public interest could be allowed under the Official Secrets Act, and the basis on which cases were assigned to the Diplock courts. Were specific offences always automatically referred, or did the authorities decide on each case? If the latter, what guiding principles were applied? Also, how long could a person be held under the Prevention of Terrorism Act 2000 before being brought before the courts? Finally, he asked the delegation to comment on the information supplied to the Committee by several NGOs to the effect that the broad powers granted to immigration officers under the Immigration Act 1971 had resulted in increasing numbers of asylum-seekers being held on arrival, either in detention centres or prisons, for an indeterminate length of time, with certain nationalities and ethnic groups being much more subject to detention than others, with the result that persons belonging to such groups were deterred from applying.

76. Mr. HICKSON (United Kingdom), in reply to the Committee's questions relating to the segregation of juveniles from adults and child protection in custody, said that his Government's derogation from article 10, paragraph 2 (b), of the Covenant was a general one that covered all three jurisdictions in the United Kingdom. His Government intended to review that derogation in relation to the three jurisdictions. Some of the issues concerned all three, while others were quite separate. However, he emphasized that in no case were children and adults simply thrown together while in custody. On the whole, juveniles were detained separately, but it was the exceptions and special cases that involved particular difficulties.

77. In the jurisdictions of England and Wales, a new Youth Justice Board with overall responsibility for juvenile custody purchased places from three sets of providers: the Prison Service, secure training centres and local-authority secure units. The vast majority still came

from the Prison Service. The Board set standards for all three types of institution, and juveniles were separated from adults wherever possible. Out of 3,150 juvenile detainees some 3,000 were currently in juvenile facilities. The Board went to great lengths to meet the special needs of the 130 females in juvenile custody, especially in the light of considerations such as educational level and distance between home and place of confinement. Currently, all females in that group were held in accommodation with young adults, i.e. women aged 21 and under. In 2002, a new juvenile facility would be made available for 60 of them, and the remainder, all aged 17, would be held with prisoners aged 18-21 in two largely separate wings within female prisons. There would always be a number of young men and women who had to remain near to courts and to their solicitors during trials of further offences in areas which had no suitable juvenile accommodation. Although held in adult prisons, they did not normally mix with adults unless they required access to special programmes or had a particularly high security classification that dictated where they must be held. Owing to the uneven geographical coverage by juvenile establishments, it was not currently possible to set a date for ending the use of prisons for juvenile detention. In 2001, an investment programme had been started with a view to expanding the system by some 400 places.

78. In the jurisdiction of Northern Ireland, the number of juveniles held in custody had been reduced significantly, so that the average population was now fewer than 30. The majority were accommodated in juvenile justice centres that provided a regime designed to meet their specific needs. Courts were empowered to commit 15 and 16 year-olds to young offenders' centres where young adults aged up to 21 would be present, in cases where the individual represented a particular risk to himself or others. There was a limited need for such measures, and the development of a new type of juvenile justice centre with improved facilities would reduce that level still further. The Government believed it had developed a flexible and progressive approach to the custody of young people which did not involve unnecessary mixing of juveniles and adults, particularly older adults. One juvenile justice centre in Northern Ireland, the secure unit for boys, accommodated those who had been sentenced to custody separately from those being held on remand. At the juvenile justice centre which accommodated girls and vulnerable, often younger, boys, the very low population made it both impracticable and undesirable to practise such separation. Such avoidance of segregation into very small groups was fully consistent with good childcare practice.

79. In the jurisdiction of Scotland, most juveniles held in custody were housed in young offenders' institutions (YOIs), which were separate from adult prisons. Every juvenile sentenced to prison - as opposed to being remanded in custody awaiting sentence - had to be held in a YOI, unless a ministerial order was made for his or her detention in an adult prison. For a number of reasons, such as proximity of the court, the need to keep a prisoner near to his or her family or, in extreme circumstances, for the purposes of security and order, young offenders on remand were occasionally mixed with adult prisoners. On even rarer occasions, convicted young prisoners were mixed with older prisoners while awaiting sentence. Young offender policies in Scotland were coordinated by a policy and management group chaired by a member of the Youth Justice Board. Convicted persons aged under 18 were managed within a YOI, but were kept in a separate building with a regime specific to their needs.

80. Finally, with regard to child protection, he emphasized that the existing child welfare legislation was applied as far as possible. Each YOI in England and Wales had a nominated child protection officer responsible for agreeing protocols with local child protection committees comprising representatives from the social services, the police and the medical profession. The committees were responsible for investigating alleged incidents at juvenile facilities. Problems still remained with the effectiveness of the protocols developed in some areas, and with certain procedural issues.

81. Mr. STEPHENS (United Kingdom), replying to Mr. Kretzmer's question about allegations and injunctions relating to the Special Force Unit, said he was unable to expand further on his earlier answer with regard to the allegations. The injunctions sought against newspapers had been intended to protect national security or the lives of others, rather than prevent the airing of complaints. Decisions on the granting of such injunctions were taken by independent courts, which were required to take account of freedom of expression and other such considerations guaranteed under the Human Rights Act. In the example of the Finucane case, such widespread airing of allegations had led to further investigations, which would be supervised by a judge of international standing to whom all parties in possession of relevant information were encouraged to apply.

82. His Government shared the concern expressed by Ms. Medina Quiroga about events at Holy Cross primary school in Belfast and their effects on the children involved. The police had taken strenuous action to ensure safe passage to and from the school for the children and their parents. Due regard was being paid to the protesters' right of self-expression, and the level of violence associated with the original protest had declined significantly. Unfortunately, the continuing claims and counterclaims made by two religious communities living in such close proximity in north Belfast showed that, despite recent legislative advances in the human rights field and the determination of the police to uphold human rights, the Government still faced serious problems in addressing deep-seated attitudes. The Government had recently introduced new security measures designed to meet the concerns of both communities, including additional police patrols and physical security measures. In addition, the Department of Education had supplied the school's board of governors with funding intended to provide additional tuition for children and counselling for teachers. The Government was also seeking other ways of resolving the issues with a view to avoiding any repetition of the distressing scenes which had occurred.

83. Ms. STEWART (United Kingdom), replying to questions raised by Mr. Klein, Mr. Ando and the Chairperson in connection with the Official Secrets Act, said she was unable at present to supply statistics on the number of prosecutions in the past five years involving injunctions. She would send the Committee the information on her return to London. However, it could certainly be said that very few prosecutions and applications for injunctions had been made under the Act. Regarding the Committee's suggestions that the Act was used to intimidate journalists, she observed that it did not prevent anyone from taking their concerns or information to the police or the investigating authorities. Indeed, that was the proper and responsible course of action.

84. The Official Secrets Act did not provide for a public-interest defence in relation to national security. That was because of concern that, if such a defence existed, those subject to the Act would make their own judgements as to what lay in the national interest. Such judgements would then need to be tested in court, and even if the court found that a disclosure

was not in the national interest, the damage would have already been done. Regarding Mr. Klein's question about the necessity for the Official Secrets Act, she said that since the whole issue of the Act's interpretation and application was currently the subject of court proceedings, it would be inappropriate for her to comment further.

85. In reply to Mr. Ando, she said that systems were in place to offer those subject to the Act guidance on material that might be disclosed. There were also internal procedures that allowed members of individual services to air their grievances; they could also report their concerns about wrongdoing to the police. With regard to the balance between press freedom and regulation, her Government continued to believe in the effectiveness of the self-regulatory system embodied by the Press Complaints Commission, rather than statutory means. The Human Rights Act required courts to pay particular attention to the right to freedom of expression when granting relief in proceedings relating to journalistic, literary or artistic material.

86. Turning to Mr. Klein's request for statistics on prosecutions brought under the Obscene Publications Act and the Theatres Act, she again undertook to provide the necessary information in writing in the very near future. However, it was probably safe to say that no prosecution had been carried out under the Theatres Act in the past five years. With regard to the closure of cinemas by local authorities which disagreed with decisions of the British Board of Film Classification, she replied that, on the contrary, it was more likely that local authorities would allow the showing of films which had not been granted a certificate by the Board. In response to Mr. Klein's suggestion that the Obscene Publications Act was outdated, she said her Government considered that the essential test under the Act, namely that material taken as a whole might tend to deprave or corrupt those likely to hear or see it, offered a flexible set of conditions which allowed courts to take account of changing standards. The Act had even been criticized by some as too flexible.

87. Turning to Mr. Ando's concerns about electronic tagging and "home detention curfew" in connection with question 19, she said the measure was seen as a means of reducing sentences and facilitating the convicted person's reintegration into society. Given that the scheme was discretionary and operated at the prisoner's request, it did not seem unreasonable for the prisoner to submit to electronic tagging. With regard to the use of electronic monitoring to deal with stalking, she said that the provisions currently in force in England and Wales involved electronic monitoring combined with curfew orders that required the offender to be in a certain place during certain hours. It was felt that exclusion orders, which had not yet come into force, were likely to offer better protection in that they enabled the courts to compel an offender to stay away from certain places and people, and allowed for such prohibition to be monitored electronically. Pilot schemes, designed primarily to test the technology, would be introduced in the near future.

The meeting rose at 6.05 p.m.