

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



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

Initial reports of States parties due in 1977

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND^{1/}

[10 November 1978]

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^{1/} The present report constitutes the second part of the initial report and concerns some of the Dependent Territories administered by the United Kingdom. The initial report of the United Kingdom (CCPR/C/1/Add.17) was considered by the Committee at its 67th, 69th and 70th meetings (see CCPR/C/SR.67, 69 and 70).

INTRODUCTION

1. In August 1977 the United Kingdom submitted its Report under Article 40 (1) (a) of the Covenant. In paragraph 4 of the introduction to that Report, the United Kingdom undertook to submit separately a supplementary Report describing the position in the United Kingdom's Dependent Territories. This first supplementary Report is in fulfilment of that undertaking and the submission of the United Kingdom's second supplementary Report dealing with the position in the Channel Islands and the Isle of Man, which is to follow, will complete the submission of Reports required of the United Kingdom under Article 40 (1) (a) of the Covenant.

2. The position in relation to each Dependent Territory covered by this Report is set out in the annexes to this Report. It may help the Committee if certain preliminary remarks of a general nature are made, and if the United Kingdom offers some further comment on the implementation of Article 1 of the Covenant.

GENERAL

3. The various Dependent Territories whose reports are annexed to this Report have their own legal systems. Although in many respects those legal systems share certain common features with each other and with the legal system of the United Kingdom, on any particular matter it is necessary to look at the legislation and other rules of law applying in the Dependent Territories concerned. Because each Dependent Territory has a separate and distinct legal system, and most are in varying degrees self-governing, it was appropriate for the annexed reports in respect of each Dependent Territory to be prepared by the authorities in that Territory. It is for that reason that the annexes to this Report differ in the way in which they comment on the various Articles of the Covenant.

4. In none of the Dependent Territories covered by the annexes to this Report does the International Covenant on Civil and Political Rights itself have the force of law. The obligation assumed under Article 2 (2), which leaves each Party free to decide the method by which it gives effect to the rights recognized in the Covenant, is fulfilled in those Territories by the provision of safeguards of different kinds operating in the various legal systems concerned, independently of the Covenant but in full conformity with it.

5. The annexes to this Report contain in respect of each Territory short general explanations, Article by Article, of legal rules concerning the rights recognized in the Covenant, citing, where appropriate, the principal legislative enactments, cases and administrative instructions in which the rules are embodied (the full texts of the laws and regulations referred to have been made available to the Human Rights Committee). ^{2/} In some respects the authorities in the Territories have stated that the position in the Territory is as set out in the Report submitted by the United Kingdom, to which reference therefore also needs to be made. However, the legal rules concerning human rights and freedoms are not comprehensively embodied in any one legislative instrument or series of such instruments in any of the Dependent Territories, although in five Territories the Constitution contains a group of provisions dealing with human rights and freedoms. In most cases the

^{2/} Texts of the laws and regulations mentioned in this Report, made available by the Government of the United Kingdom, may be consulted in the original language upon request to the Secretariat.

relevant legal rules derive both from legislation, in many fields, and from case law and, particularly because of the nature of the latter, cannot be comprehensively enumerated. The explanations in the annexes to this Report should not, therefore, be regarded as an exhaustive statement of the safeguards provided.

ARTICLE I

6. It has been the consistent policy of British Governments since the end of the Second World War to lead the Dependent Territories to a position where they can exercise self-determination, to grant independence to any territory which seeks it, but not to compel them to proceed to independence or to joinder with another country against their wishes, in accordance with the wishes of the inhabitants and the provisions of the United Nations Charter.

7. On ratifying the Covenant on Civil and Political Rights the Government of the United Kingdom maintained the declaration in respect of Article 1 which had been made on signature, namely, their understanding that by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter, their obligations under the Charter will prevail.

8. Since the Government of the United Kingdom signed the International Covenant on Civil and Political Rights on 16 September 1968 (which was ratified by the United Kingdom on 20 May 1976) Fiji, the Bahamas, Grenada, the Seychelles, the Solomon Islands and Tuvalu have attained independence. These States, with the exception of Tuvalu which only became independent on 1 October 1978, are all members of United Nations in their own right.

9. The Territories whose reports are annexed vary greatly in history, size, population and economic and political potential. It may be helpful to summarize the stage of constitutional development reached by each Territory.

BELIZE (ANNEX A)

10. This Territory enjoys internal self-government. The only barrier to the independence of the Territory is the claim by Guatemala to the whole of Belize and discussions intended to arrive at a negotiated settlement of the matter are still in progress.

BERMUDA (ANNEX B)

11. This Territory enjoys a wide measure of internal self-government under an elected legislature and Ministers. The Government of Bermuda published, for public discussion, a Green Paper on the possible advantages and disadvantages of independence in 1977 and a White Paper is expected shortly. The right of self-determination is guaranteed by the policy of successive United Kingdom Governments, subject to the wishes of the population of Bermuda.

BRITISH VIRGIN ISLANDS (ANNEX C)

12. The territory at present enjoys a very large measure of internal self-government. In 1973 a Constitutional Commission was appointed to report on the question of constitutional advancement in the Territory. That report was presented to the Secretary of State for Foreign and Commonwealth Affairs on 20 December 1973 and resulted in a new and more advanced constitution being introduced in 1976.

CAYMAN ISLANDS (ANNEX D)

13. The Territory enjoys internal self-government. A Mission of the United Nations Special Committee on the granting of independence to colonial countries visited the Cayman Islands in April 1977. The Mission's report and the Resolution adopted by the Special Committee - which accepted the Report - stressed the need to bear in mind the express wishes of the Caymanian people, who had informed the Mission that they wished at the present time no constitutional change.

FALKLAND ISLANDS (ANNEX E)

14. The Falkland Islands enjoy internal self-government. Following constitutional changes in 1977, the Legislative Council now has an elected majority. There is at present no demand for independence. The Territory is small and sparsely populated.

GIBRALTAR (ANNEX F)

15. This Territory enjoys internal self-government with an elected legislature. The present Constitution effects a balance between the maximum degree of autonomy in local affairs and the retention in the Governor's hands of the powers required to enable the British Government to fulfil its responsibilities.

GILBERT ISLANDS (ANNEX G)

16. This Territory enjoys internal self-government. A new legislature was elected in February and a Chief Minister in March; the new Government has made proposals for the holding of a pre-independence Constitutional Conference at which a date for independence will be set.

HONG KONG (ANNEX H)

17. Hong Kong is a Colony of the United Kingdom, administered by a Governor, aided by an Executive Council, and a Legislative Council.

MONTSERRAT (ANNEX I)

18. This Territory enjoys internal self-government. It was visited in 1975 by a visiting Mission from the Committee of 24.

PITCAIRN (ANNEX J)

19. The Governor of Pitcairn is the British High Commissioner in Wellington and the Colony is administered through the Commissioner in the Auckland Office of the British High Commission. Local affairs are run by an Island Council consisting of the Island Magistrate and nine members. The Island Council has stated that it does not wish to introduce any changes which would affect the nature of the relationship between the people of Pitcairn and the United Kingdom Government.

ST HELENA (ANNEX K)

20. This Territory enjoys internal self-government. St. Helena is not an economically viable unit, and is entirely dependent on grants in aid by the United Kingdom Government. St. Helena has not expressed a wish for further constitutional change.

TURKS AND CAICOS ISLANDS (ANNEX L)

21. This Territory enjoys internal self-government and has not expressed a wish for further constitutional change. Under the provisions of the more advanced Constitution which came into force in September 1976, the Territory now enjoys an elected ministerial form of Government with legislative and executive councils. Whilst executive authority is vested in the Governor, he normally acts in accordance with the advice of the Executive Council.

ANNEX A

REPORT BY BELIZE UNDER ARTICLE 40 (1)(a)

PART I

1. The International Covenant on Civil and Political Rights does not itself have the force of law in Belize, the obligation assumed under Article 2 (2) which leaves each party free to decide the method by which it gives effect to the rights recognized in the Covenant, is fulfilled in Belize by the provision of safeguards of different kinds operating within the legal system of Belize independently of the Covenant but in conformity with it.

2. The explanations provided in the Report are confined to the legal system of Belize. The legal rules of that system are in many respects similar to those which apply in England and Wales. The legal rules concerning human rights and freedoms are not embodied in any one legislative instrument or in a series of such instruments. They cannot therefore be succinctly and comprehensively enumerated. This Report contains however short general explanations, article by article, of legal rules concerning the rights recognized in the Covenant, citing where appropriate the principal legislative enactments and administrative instructions in which the rules are embodied. The full texts of these instruments are available to the Human Rights Committee. The explanations in this Report should not, therefore, be regarded as an exhaustive statement of the safeguards provided.

PART II

Articles 2 and 3

3. The measures which in Belize give effect to the rights recognized in the Covenant are described in this Report in relation to each Article. They do not discriminate between individuals on any such basis as is mentioned in Article 2 and, as is described in relation to other Articles, certain specific measures have been taken to secure the equal and effective protection of all persons against such discrimination.

4. Although the Laws of Belize do not confer a specific right of action in respect of violation of any basic rights or freedoms as such, prevention of the free exercise of the rights and freedoms set forth in the Convention will normally involve some unlawful interference with the person, liberty or property of the victim for which the law provides a civil remedy or a criminal sanction. There are no restrictions on a person's right of recourse to the courts and legal aid is generally available for those who cannot afford to pay for legal assistance.

Article 4

5. No derogations under this Article have been made in respect of Belize.

Article 5

6. Belize has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant. The sections of this Report dealing with the rights and freedoms concerned describe the limitations which have been placed on their exercise.

7. The safeguards which, in Belize, give effect to the rights recognized in the Covenant exist independently of the Covenant which does not itself have the force of law.

Article 6

8. The right to life recognized in this paragraph is protected both by the Criminal Law and by the Civil Law. The taking of a person's life, save in certain exceptional conditions, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to murder, manslaughter or infanticide, according to the circumstances. The exceptional conditions include cases where the taking of life occurred:

- (i) in pursuance of a sentence of a court;
- (ii) in exercise of the right of self-defence (provided that no more force is used than is reasonable in the circumstances);
- (iii) in the prevention of crime, provided again, that no more than reasonable force is used.

9. If death is caused by a negligent act or by an intentional and unjustified act, it is a wrong against the deceased, and his personal representatives can bring an action in tort (i.e. civil wrong) against the person whose act caused the death or against the latter's employer if the act was carried out in the course of that person's employment. If the deceased would have had an action against any person in respect of the act which caused the death (if death had not ensued), any dependents of the deceased has a right of action for any pecuniary loss they have suffered. The estate of a workman killed in the course of his employment would be able to sue for workman's compensation under the Workmen's Compensation Ordinance, 1959.

10. In those exceptional cases where a person may be sentenced to death he has the right to petition the Crown for a pardon or for the commutation of his sentence. A pardon or commutation of sentence may be granted in all cases in the exercise of the Royal Prerogative of mercy.

11. The laws of Belize are in compliance with paragraph 5 of this Article. Sentence of death is not imposed for crimes committed by persons below eighteen years of age. The prerogative of mercy is presently exercised in all cases except in instances where heinous acts were committed. The death sentence is not imposed on pregnant women.

Article 7

12. The right not to be subjected to torture or to other forms of ill-treatment or punishment is protected both by the criminal law and by the civil law. Any use of force against a person, save in exceptional circumstances, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to assault or battery. The exceptional circumstances include cases where the use of force occurs:

- (i) in self-defence or the defence of property, provided that no more force is used than is necessary for the purpose;
- (ii) in the prevention of crime or in the lawful arrest or detention of an individual.

13. A person who has been ill-treated may bring an action in tort for damages against the person or persons who, it is alleged, were responsible for the assault. If the assault was committed by a person in the course of his employment the action

would lie both against that person and against his employer. And in a case where it was not possible to identify which of several employees was responsible for an assault, an action for damages could still be maintained against their employer.

14. Apart from these general provisions further rules have been adopted to ensure the protection of the individual in particular circumstances. For example, in addition to their liability to prosecution for any criminal offences they commit, police officers are liable to be dealt with in internal disciplinary proceedings for any infringement of the Police Regulations.

Article 8

15. There is no slavery or servitude, nor any forced or compulsory labour as described in this Article. Labour is given freely under contract and it is customary for service contracts to be terminable by either party or due notice; in cases of breach of contract the courts will not generally order specific performance. Any contract smacking of servile obligations is illegal as contrary to public policy. The Labour Ordinance provides for the Labour Commissioner to provide a means of reconciliation where any serious disagreement arises.

16. The right of action for false imprisonment ensures the protection of the subject from wrongful detention or confinement, whether for the purpose of exacting labour or for any other purposes. False imprisonment is also a criminal offence at common law. Any unlawful threat or use of physical violence for the exaction of labour or any other purpose gives the sufferer a right either to prosecute the offender or to bring a civil action against him. The common law right to the writ of habeas corpus is available in all cases of unlawful detention, whether in prison or in private custody. By this writ the Supreme Court may command that the person detained be brought before the court, so that the causes of his detention may be enquired into. If the detention is shown to be unlawful, his release will be ordered.

Article 9

17. Among the most important common law rights are liberty of the person and freedom from arbitrary arrest. Any person who arrests or detains another without lawful cause will be liable not only to a civil action in damages for false imprisonment, but also to criminal prosecution for a criminal offence. Every restraint of the liberty of one person under the custody of another, either in a prison, house or in the street is treated as an imprisonment.

18. In general, an arrested person must be informed of the true ground of his arrest. If this is not done the person who effected the arrest, whether a policeman or a private person, may be liable for false imprisonment. This requirement turns on the basic proposition that a person is, prima facie, entitled to his freedom and is only required to submit a restraint on his freedom if he knows in substance the reason why it is claimed that restraint should be imposed. All summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him.

19. As a general rule a person taken into custody without a warrant must be brought before a court as soon as practicable: if the offence is not serious, and it will not be practicable to bring him before the court within 24 hours, he must be bailed immediately. Whether the apprehension is with or without a warrant there must be no unnecessary or unreasonable delay in taking the person before a court. This is provided for in the Police Ordinance.

20. The remedy of habeas corpus, which puts an end to illegal confinement, defends the right of personal freedom. The writ of habeas corpus may be obtained by any person detained against his will, not by a lawful sentence or order of a court, on probable cause being shown in an affidavit. It may also be obtained by any person acting on behalf of the person detained. Unless the detention is shown to be lawful, the person detained will at once be set free; discharge under the writ is final and cannot be questioned.

21. There is a right of action at common law for damages for false imprisonment where a person has been arrested or otherwise detained in circumstances in which the detention was not expressly or implicitly authorized by law. A person may also obtain damages against anyone who procures his arrest or imprisonment by means of criminal proceedings which are instituted maliciously and without reasonable cause.

Article 10

22. All penal institutions are subject to the direction of the Minister of Social Services who is responsible for their proper administration and is answerable to the National Assembly on matters relating to their maintenance and upkeep.

23. Each penal institution has a Board of Visitors, the members of which are appointed by the Minister and includes a proportion of Magistrates who by virtue of their office have a statutory right to visit a prison to which their courts commit prisoners.

24. The regulation and management of all penal institutions are governed by rules drawn up by the Minister of Social Services and approved by the National Assembly.

25. (a) As far as this can be reasonably done, accused persons are kept out of contact with convicted prisoners and are subject to separate treatment appropriate to their unconvicted status.

(b) Accused juveniles are incarcerated separately from adults and are brought as speedily as possible for adjudication.

26. Emphasis is increasingly being brought to bear on the reformation and social rehabilitation of prisoners. Juvenile offenders are housed in separate institutions from those of convicted adult prisoners.

Article 11

27. No person may be imprisoned under the laws of Belize for failure to fulfill a contractual obligation.

Article 12

28. There is no restriction on the movement of nationals whether into or without the country of Belize. There are no restrictions imposed upon the movement of aliens within Belize, or on their right to leave the country.

Article 13

29. Aliens may duly be deported on an order made in cases of urgency by the Ministry responsible for immigration matters or normally by a Court of Law following upon an infringement of the laws of Belize.

Article 14

30. Domestic courts and tribunals are open to all persons on an equal basis. Only certain minor distinctions in the procedural rights of litigants are made on grounds of their status. For example, an infant may only carry on proceedings by his guardian or some other person who is called his next friend.

31. All criminal proceedings are conducted in public.

32. Impartiality of all judicial proceedings is safeguarded by the rule of natural justice that no man may be judged in his own cause (nemo iudex in causa sua) and by the independence of the judiciary which is free to administer the law under the protection of the law without fear or favour. If, for any reason a real likelihood of bias can be established, the judgement is voidable. No inquiry is made whether any bias has in fact been shown; it is sufficient to prove that the judge had an interest in the proceedings. Trial by jury for serious criminal offences provides further general safeguard against prejudice in the administration of the law. As regards the independence of the judiciary, Supreme Court judges are removable from office by the Governor only for misconduct and then only if, at the request of the Governor, Her Majesty the Queen had referred the matter to the Privy Council and been advised by the Privy Council that the judge should be removed.

33. It is a fundamental principle of the criminal law that an accused person is presumed innocent until proved guilty. The guilt of the accused must be proved beyond reasonable doubt as to his guilt. In general, the burden of proof is on the prosecution and never shifts. In a very few cases, however, the persuasive burden is on the accused. It is for the accused to prove the defences of insanity and diminished responsibility; and in some cases statutes have placed the burden of proving certain facts or excuses on the defence.

34. When the burden of proof is on the accused, it is sufficient for him to prove the exculpating fact on a balance of probabilities. The burden of proof on the accused is thus never as high as that on the prosecution. Summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. A person arrested without warrant must be told the reason for his arrest; and a written copy of the charge against him is always given to him. Where trial is on indictment, the accused is also entitled to a copy of the information and to a copy of the indictment (a formal written accusation of the charge).

35. The accused must, as a matter of natural justice, be given an adequate opportunity to prepare his defence. If the trial is due to take place before he has had such an opportunity he may apply to the Court for an adjournment. If the application is genuine, it must be granted; if it is not granted, the conviction is liable to be quashed on appeal. As regards facilities, in any trial on indictment it is the duty of the prosecution to inform the defence of the identity of their witnesses and of the nature of their evidence. Should any available relevant credible evidence be withheld, and subsequently discovered by the defence, an appeal can only result in the conviction being quashed; the Court of Appeal cannot order a new trial in these circumstances. In the preparation of his defence, the accused has the right to instruct a solicitor of his own choice.

36. In general a defendant has a right to be present at his trial, but the proceedings may in exceptional circumstances be continued in his absence if he voluntarily refrains from attending.

37. The right of an accused person to defend himself in person or to be represented by solicitor of his own choice is an accepted principle. It is the duty of the judge or magistrate to inform a defendant who appears unrepresented of his procedural rights and particularly of his rights to cross-examine witnesses for the prosecution and, at the close of the prosecution case, to give sworn evidence on his own behalf or to make an unsworn statement, to call witnesses and to address the court.
38. The accused person, or his counsel if he is represented, has the right to question the witnesses of the prosecution and to call witnesses on his own account. The defence may secure the attendance of a person as a witness on behalf of the accused by the issue of a subpoena, which compels the person on whom it is served to attend a court.
39. Where a prisoner who is ignorant of the English language is being tried and undefended, the evidence must be interpreted for him. If he is defended, the evidence should be interpreted except when he, or his counsel on his behalf expresses a wish to dispense with the interpretation, and the judge thinks fit to permit the omission; but the judge should not permit it unless he is of the opinion that the accused substantially understands the evidence to be given against him.
40. A defendant is a competent witness for the defence at every stage of criminal proceedings whether on his own behalf or on behalf of any person who is tried with him. But he cannot be called as a witness except upon his own application, and his failure to give evidence must not be made the subject of any comment by the prosecution.
41. A magistrate's court before which a person under 17 is charged with an indictable offence must deal with it summarily except for major offences.
42. Any person convicted of an offence on indictment may appeal from the Supreme Court to the Court of Appeal against his conviction. Appeal also lies against any sentence passed for an offence, unless fixed by law; against a verdict of not guilty by reason of insanity; and against the finding of a jury that the defendant was under a disability.
43. If an appeal against conviction is based upon any ground which involves a question of law alone, or the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact or a question of mixed law and fact, the appeal lies without leave; in any other case, the leave of the Court of Appeal is required.
44. In the case of summary offences, there is a right of appeal from a magistrates' court to the Supreme Court:
- (a) against sentence when the accused pleaded guilty, and
 - (b) against conviction or sentence when the accused did not plead guilty.
45. An appeal on points of law and jurisdiction lies by way of case stated to the Supreme Court from a magistrates' court.
46. There are no provisions conferring a right on a person convicted of a criminal offence but later exonerated to receive compensation from public funds for any loss or hardship he may have suffered.

47. However, a person may have a right to bring a civil action for damages against the person or authority responsible if criminal proceedings have been instituted maliciously and without reasonable cause. In the case of such a civil action damages are assessed and payment may be enforced by the courts according to the normal rules applicable in such cases.

48. Moreover, there is a procedure for making ex gratia payments out of public funds where, after a person has been convicted by a final decision of a criminal offence, as the result of the emergence of fresh information the conviction is found to be wrong.

49. The recipient of an ex gratia payment is required to give an undertaking not to bring civil proceedings against any public authority. In effect he has the option to rely on the civil law or to accept the ex gratia payment.

50. It is a long established principle of common law that a person may not be tried for a crime:

- (i) in respect of which he has previously been acquitted or convicted;
- (ii) in respect of which he could on some previous indictment have been lawfully convicted;
- (iii) if the crime is in effect the same or substantially the same one in respect of which:
 - (a) he has previously been acquitted or convicted
 - (b) he could on some previous indictment have been convicted.

Article 15

51. The National Assembly is competent to enact ex post facto criminal legislation, if it regards this as necessary, but there is a powerful presumption against its doing so, and there is also certainly no case where a general criminal statute has created a crime retrospectively. It is also a fundamental rule that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary distinct implication.

Article 16

52. There are no cases in which a person may be deprived of the protection of the law.

Article 17

53. Any power a public authority may have to interfere with a person's right to respect for his private and family life, his home and his correspondence must be provided by law. No public authority has any right to interfere with these rights other than those provided by law. Although there is no general statutory right to privacy, particular intrusions may be the subject of actions in the courts. For example, any unauthorized entry on land or buildings is a trespass which may be restrained by injunction and which will give rise to an action for damages.

Article 18

54. There are no restrictions imposed by law on freedom of thought, conscience and religion or on freedom to change religion or belief.
55. Freedom to manifest one's religion or beliefs is restricted by law only to the extent that this is necessary to secure public safety, order, health or morals or the rights of others.
56. Interference with any of these freedoms will normally constitute a civil or criminal wrong under the common law, but in addition a statutory offence is committed by anyone who disturbs a religious meeting or obstructs a clergyman or other minister in order to prevent him from officiating at a religious service.
57. Although religious worship and instruction is an essential feature of the curriculum of public and voluntary schools, parents may insist on their children being excused from attendance at religious worship and instruction.

Article 19

58. The common law knows of no restrictions on the right to hold opinions; and it does not inhibit freedom of expression save in respect of statements which are in contempt of court, blasphemous, seditious, defamatory of another person, in breach of confidence or likely to provoke a breach of the peace. Any restrictions on freedom of expression and the freedom to receive and impart information other than these can result only from legal provisions enacted by or approved by the National Assembly in the public interest.

Article 20

59. Although criminal law does not in terms prohibit the distribution of propaganda for war, if the propaganda, or its manner of presentation was such as to bring the sovereign or government into hatred or contempt or generally to create disorder, discontent, dissatisfaction, it may amount to sedition, at least if there is an intention to provoke a breach of the peace. Or if the propaganda were intended or tended to cause a breach of the peace, and the language used was threatening, abusive or insulting, a prosecution may lie under the Criminal Code.
60. While again, criminal law does not prohibit the advocacy of national, racial or religious hatred in the terms provided by paragraph 2 of this Article, advocacy of hatred may, in certain circumstances, give rise to the offence of sedition and to an offence under the Criminal Code.

Article 21

61. Freedom of peaceful assembly is one of the oldest common law rights and there are no restrictions on the exercise of this right other than those prescribed by law in the interests of the community as a whole and for the protection of the rights and freedoms of others. Common law, for example, forbids assemblies convened with the express object of effecting a breach of the peace and the Control of Public Meetings and Public Processions Ordinance, 1967 makes provision for the regulation of processions on public thoroughfares.

Article 22

62. There are no legal objections to complete freedom of association other than those concerned with public safety, national security and the prevention of crime. It is unlawful, for example, to organize an association for the purpose of usurping the function of the public or of the armed forces of the Crown, or for the use of display of physical force in promoting any political objects.

63. There is no restriction on organization or trade unions for lawful purposes.

64. Belize as a dependent territory of the United Kingdom is bound by the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize.

Article 23

65. Domestic law accords to the family the protection required by its position as the natural and fundamental group unit of society.

66. The Marriage Ordinance lays down the formalities required for the solemnization of marriages. These formalities are designed to ensure, inter alia, that so far as is practicable a marriage entered into under its provisions may not subsequently be impugned. A breach of these provisions may attract criminal sanctions.

67. During the subsistence of a marriage the rights of each spouse vis-à-vis third parties are protected, inter alia, by the common law action for loss of consortium if this was due to the defendant's breach of contract or tort.

68. A marriage may be terminated only by the death of one of the parties or by a decree of divorce or nullity pronounced by a court of competent jurisdiction.

69. It is necessary for a valid marriage that the parties should consent to marry one another. If, therefore, there is a mistake to the person with whom the marriage ceremony is performed or as to the nature of the ceremony itself, the marriage is void. However, when a person of full age and mental capacity goes through a ceremony of marriage there is a presumption of consent which can only be rebutted by clear evidence.

70. Fraudulent misrepresentation or concealment does not, apart from duress or mental disorder and apart from the concealment of pregnancy by another man or of venereal disease in a communicable form, affect the validity of a marriage to which the parties freely consented with a knowledge of the nature of the contract. But if the person is induced to go through a ceremony of marriage by threats or duress, or in a state of intoxication and without any real consent to the marriage, it is invalid. In all such cases the test of validity is whether there was any real consent to the marriage.

Article 24

71. By reason of their status as minors, children enjoy a wide measure of protection by the Infants' Ordinance.

72. Failure by a parent to give information concerning the birth of his child, and wilful refusal by an unqualified informant to answer any questions put to him by the Registrar relating to the particulars required to be registered constitute criminal offences.

Article 25

73. The right to participate in the conduct of public affairs is primarily secured by the elections of representatives to the House of Representatives and to local authorities.

74. Every citizen who is not by reason of insanity, imprisonment or bankruptcy disqualified from doing so, may vote or if English speaking be elected a Member of the House. Belize is an English speaking Territory with a 93 per cent literacy (English) rate. The number of citizens affected by the language requirement is approximately 4 per cent of the population. Most are recently registered or naturalized citizens who with the passage of time would be fully assimilated into the Belizean pattern of living, the speaking of the English language included.

Articles 26 and 27

75. The laws of Belize apply equally and without discrimination to all nationals and aliens. Persons of all ethnic, religious or linguistic groups are not only free to practise their beliefs, but are afforded all facilities necessary for doing so.

ANNEX B

REPORT BY BERMUDA UNDER ARTICLE 40(1)(a)

PART I

1. The International Covenant on Civil and Political Rights does not itself have the force of law in Bermuda. However, the obligation assumed by the United Kingdom on behalf of the Government of Bermuda under Article 2(2) is fulfilled by Bermuda through the media of various safeguards operating independently within the legal system. The Bermudian legal system draws its rules from four main sources - the Bermuda Constitution Orders 1968 and 1973, local statute law, case law and English authority.

2. While the human rights and freedoms recognized by the Covenant cannot in Bermuda be found in one document, the principal legislative instruments protecting civil and political rights in Bermuda are -

(a) Chapter I of the Schedule to the Bermuda Constitution Order 1968 which makes provision for the Protection of Fundamental Rights and Freedoms of the Individual.

(b) Sections 73 to 80 of the Schedule to the Bermuda Constitution Order 1968 which make provision for the Supreme Court and a Court of Appeal and makes the appointment and tenure of office of the judges independent of the executive.

(c) Section 15 of the Supreme Court Act 1905 which applies subject to any Acts passed thereafter the common law, the doctrines of equity and the Acts of Parliament of England in force in England on the 11th day of July 1612.

(d) The Habeas Corpus Act 1830 which applies to Bermuda the Habeas Corpus Acts of England.

(e) The Race Relations Act 1969 which prohibits discrimination on racial grounds, penalizes incitement to racial hatred and related acts.

(f) The Race Relations Council Act 1970 which establishes a Race Relations Council for the promotion of harmonious race relations and for the investigation of complaints of unlawful discrimination.

(g) The Labour Relations Act 1975, the Trade Union Act 1965, the Workmen's Compensation Act 1965, the Apprenticeship and Training Act 1971 and the Employment of Children and Young Persons Act 1963 which safeguard the interests of workers and enables them to enjoy just and favourable conditions of work and to form trade unions.

(h) The Contributory Pensions Act 1970, the Contributory Pensions and Workmen's Compensation (Reciprocal Agreement) Act 1970 and the Hospital Insurance Act 1970 which establish schemes for social and medical insurance.

There is no separate Bill of Rights.

PART II

3. Measures in force in Bermuda in regard to the Rights set out in the Covenant.

Article 1

4. The right of self-determination is guaranteed by the policy of successive United Kingdom governments, subject to the wishes of the population of Bermuda.

Articles 2 and 3

5. Freedom from discrimination as mentioned in these Articles is protected by the Bermuda Constitution Order 1968, Schedule chapter I.

6. Competent judicial redress is guaranteed for those whose freedoms have been violated, by virtue of the Bermuda Constitution Order 1968, Schedule section 15.

7. The Race Relations Act 1969 provides detailed protection. In particular section 3 provides -

Provision of goods, facilities and services.	3.(1) It shall be unlawful for any person concerned with the provision to the public or a section of the public (whether on payment or otherwise) of any goods, facilities or services to discriminate against any person seeking to obtain or use those goods, facilities or services by refusing or deliberately omitting to provide him with any of them or to provide him with goods, services or facilities of the like quality, in the like manner and on the like terms in and on which the former normally makes them available to other members of the public.
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(2) The following are examples of the facilities and services mentioned in sub-section (1) -

access to and use of any place which members of the public are permitted to enter;

accommodation in a hotel, boarding house or other similar establishment;

facilities by way of banking or insurance or for grants, loans, credit or finance;

facilities for education, instruction or training;

facilities for entertainment, recreation or refreshment;

facilities for transport or travel;

the services of any business, profession or trade or local or other public authority.

Article 4

8. Bermuda is not currently derogating from the Covenant by way of a public emergency within the meaning of paragraph 1 of this Article. The effect of a public emergency on fundamental rights and freedoms is governed by the Bermuda Constitution Order 1968, Schedule section 14.

Article 5

9. No attempt has been made to destroy or limit the rights and freedoms recognized in the Covenant but fundamental rights of the individual are always subject to respect for the rights and freedoms of others and for the public interest to the extent that such restrictions are reasonably justifiable in a democratic society - see generally the Bermuda Constitution Order 1968, Schedule chapter I.

Article 6

10. The Bermuda Constitution Order 1968, Schedule section 1(a) specifically recognizes the right to life. In particular section 2 provides -

Protection of right to life. 2.(1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission by that person of a criminal offence,

or if he dies as a result of a lawful act of war.

11. A power of pardon rests with the Governor by virtue of section 22 of the Schedule and the Governor by virtue of sections 22 and 23 is required to consider granting a remission of every sentence of death in consultation with an advisory committee.

12. Section 55(2) of the Criminal Code provides "Sentence of death shall not be pronounced on or recorded against a person who is under eighteen years of age, but in lieu thereof the Court shall sentence such person to be detained during Her Majesty's pleasure; ..."

13. Section 55(3) of the Criminal Code provides "Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section 565 to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death or where she is under eighteen years of age to be detained during Her Majesty's pleasure ..."

Article 7

14. The right not to be subjected to torture or inhuman or degrading treatment or punishment is protected by the Bermuda Constitution Order 1968, Schedule section 3 and relevant provisions of the Criminal Code.

Article 8

15. The Bermuda Constitution Order 1968, Schedule section 4(1) provides that no person shall be held in slavery or servitude and section 4(2) that no person shall be required to perform forced labour.

Article 9

16. The fundamental rights of personal liberty, security of person and freedom from arbitrary arrest are protected by the Bermuda Constitution Order 1968, Schedule section 5.

17. Section 15 gives the victim of an unlawful arrest the right to obtain compensation from the Supreme Court if it is not otherwise available to him.

Article 10

Paragraph 1

18. There is no single legal safeguard for the rights mentioned in this paragraph. However, the combined effect of various legal provisions, for example constitutional rights on arrest and rights recognized in the Prison Rules 1951, is to provide the protection contemplated by the Covenant.

Paragraph 2

19. The Prison Rules 1951, rules 100 and 132 provide for the segregation of accused and convicted and young and adult offenders respectively.

Paragraph 3

20. The Prison Rules 1951, rule 4 protects the right recognized by this paragraph.

Article 11

21. Bermuda makes no provision for imprisonment for inability to fulfil a contractual obligation.

Article 12

22. The right to freedom of movement as mentioned in this Article is protected by the Bermuda Constitution Order 1968, Schedule section 11. Any person recognized by the law of Bermuda as belonging to Bermuda is entitled at any time to enter Bermuda.

Article 13

23. A deportation order can only be made against a person not belonging to Bermuda without a right of appeal if on conviction a court has recommended his deportation, if he is destitute, if his presence in Bermuda is unlawful or if the Governor considers it conducive to the public good to make a deportation order. (Section 101 of the Bermuda Immigration and Protection Act 1956).

24. An appeal lies to the Cabinet under section 121 of the Bermuda Immigration and Protection Act 1956 if the responsible Minister requires a person not belonging to Bermuda to leave Bermuda because his residence in Bermuda offends against that Act.

Articles 14, 15 and 16

25. The right to protection of the law on the terms mentioned in these Articles is protected by the Bermuda Constitution Order 1968, Schedule section 6.

Article 17

26. The right to privacy of the home and other property is protected by the Bermuda Constitution Order 1968, Schedule section 7. There are legal sanctions against unjustifiable attacks on honour and reputation both by criminal prosecution and by civil suit for damages.

Article 18

27. The right to freedom of conscience, thought and religion is protected by the Bermuda Constitution Order 1968, Schedule section 8.

Article 19

28. The right of freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information, is protected by the Bermuda Constitution Order 1968, Schedule section 9.

Article 20

Paragraph 1

29. Although the Criminal Code does not expressly prohibit propaganda for war, certain aspects of such conduct fall under Part VI which prohibits various acts against public authority and public order.

Paragraph 2

30. Under the Bermuda Constitution Order 1968, Schedule section 12(1), no law shall make any provision which is discriminatory of itself or in its effect. Discrimination and incitement to racial hatred and related acts are prohibited under the Race Relations Act 1969.

Articles 21 and 22

31. The right to assemble freely and associate with others, and to form and belong to trade unions is protected by the Bermuda Constitution Order 1968, Schedule section 10 and by the Trade Unions Act 1965.

Article 23

32. The family unit is accorded protection by various legal provisions, the majority of which are embodied in the following Acts: the Marriage Act 1944; the Matrimonial Causes Act 1974; the Minors Act 1950; the Legitimacy Act 1933; and the Affiliation Act 1976.

Article 24

Paragraph 1

33. The general rights of minors recognized by this paragraph are not expressly protected, but are acknowledged by various statutory provisions. In addition to the relevant statutes cited under Article 23 above, the principal Acts are: the Protection of Children Act 1943 and the Employment of Children and Young Persons Act 1963.

Paragraph 2

34. The right of a child to be registered and named on birth is protected by the Registration (Births and Deaths) Act 1949.

Paragraph 3

35. Persons born in Bermuda are prima facie citizens of the United Kingdom and Colonies by virtue of the British Nationality Acts 1948-1965 of the United Kingdom Parliament.

Article 25

Paragraph 1

36. The right to participate directly in the conduct of public affairs, and indirectly through chosen representatives, is protected by the Bermuda Constitution Order 1968, Schedule sections 30 and 55 respectively.

Paragraph 2

37. Voting rights are governed by the Parliamentary Election Act 1963 in a manner consistent with the principles laid out in this Article.

Paragraph 3

38. The public service is governed by the Public Service Commission Regulations 1968, which cannot discriminate as regards employment except in a way consistent with the Bermuda Constitution Order 1968 and the Race Relations Act 1969.

Articles 26 and 27

39. The general right to equality before the law and freedom from discrimination is protected by the Bermuda Constitution Order 1968, Schedule chapter I. There are no restrictions on the enjoyment by any groups of rights as to culture, religion and language.

ANNEX C

REPORT BY THE BRITISH VIRGIN ISLANDS
UNDER ARTICLE 40(1)(a)

PART I

1. From time immemorial the Territory of the British Virgin Islands has constitutionally and politically been a colony of Britain. This status has always been reflected in the constitutional instrument.
2. The present Constitution is the Virgin Islands (Constitution) Order, 1976 (1976, No. 2145). There is no "bill of rights" or fundamental rights and freedoms enshrined in that document and historically no such provisions have been known to the various constitutions of this Territory. Therefore, the provisions of the Covenant on Civil and Political Rights are not protected constitutionally, nor can they be invoked before and directly enforced by the courts.
3. The legal framework for ensuring the protection of those rights is to be found in the various local enactments of the British Virgin Islands; in certain imperial legislation specifically extended to the Territory by the English Parliament; and in the common law of England which has been adopted as the common law of the British Virgin Islands.
4. It is to these three sources that the analysis of the specific provisions of Parts I, II and III of the Covenant to be dealt with in part II of this report shall relate.
5. The hierarchy of courts in the British Virgin Islands starting with the lowest court is as follows:

Magistrate's Court established under the Magistrate's Code of Procedure Act, Cap. 45 of the Laws of the Virgin Islands;

High Court of Justice of the West Indies Associated States Supreme Court Virgin Islands Circuit, established by the West Indies Associated States Supreme Court Order (U.K.S.I. 1967, No. 223);

Court of Appeal of the West Indies Associated States Supreme Court, also established by aforementioned United Kingdom Order in Council;

Judicial Committee of the Privy Council.
6. Any individual who advocates that any of his rights protected by any of the three sources aforesaid have been violated, may have his claim heard before any of these courts and the appropriate remedy ordered.
7. Particularly, the remedies of habeas corpus, certiorari and mandamus are available to the subject in the appropriate circumstances.

8. Additionally there exists a Land Adjudication Officer appointed under the Land Adjudication Ordinance, 1970 (No. 3 of 1970) who hears land disputes at first instance.
9. Further, there is the Commission of Inquiry Act, (Cap. 212) which provides for the establishing of Commissions of Inquiry in matters which warrant such an inquiry.
10. Also there is provision under the Arbitration Ordinance for the appointment of arbitrators to decide disputes between contracting parties who are unable to agree amongst themselves.

PART II

Article 2

11. The law of the British Virgin Islands, like English law, does not confer any specific right of action in respect of violation of any basic rights or freedoms. However, certain civil remedies and criminal sanctions are provided where any such violation infringes or unlawfully interferes with the person, liberty or property of the subject. These remedies and sanctions are set out in this report in relation to each article of the Covenant dealt with.

12. Proceedings by and against the Crown are regulated by the Crown Proceedings Ordinance, (Cap. 22), the Criminal Procedure Act, (Cap. 20) and the Rules of the Supreme Court. However, the provisions of the Labour Code Ordinance, 1975 (No. 7 of 1975) regulating the relationship between employer and employee and the conditions and terms of such employment are not made applicable to established employees of the Crown (civil servants), they being regulated by the General Orders of the Civil Service. Notwithstanding this, the subject's civil right of action exists where his rights have been infringed by an officer or employee of the Crown. His right of recourse to the courts in such circumstances is always available and legal aid is provided for all in very limited circumstances (see Criminal Procedure Act, (Cap. 20)).

Article 3

13. The laws of the British Virgin Islands recognize a distinction between legitimate and illegitimate children in certain cases. However, some considerable thought is now being given to abolishing this distinction.

Article 4

14. No derogation in respect of this article has been made for the British Virgin Islands.

Article 5

15. Paragraph 1. The Territory of the British Virgin Islands has not to date taken any action or measures aimed at or calculated to have the effect of destroying or derogating from the rights and freedoms recognized in the Covenant, or at their limitation to a greater extent than is provided for in the Covenant.

16. Paragraph 2. The legal structure and safeguards built in thereto are designed to give effect both to the rights recognized in the Covenant, and those independent of the Covenant as stated in part I of this report. Consequently, the question of derogation from those rights on the pretext that some one or more are not recognized by the Covenant does not arise.

Article 6

17. Paragraph 1. As in the United Kingdom the inherent right to life by every human being is protected both by the criminal law and by the civil law. There are instances where by law the taking of a life is not unlawful. However, these are exceptional circumstances and are as outlined in paragraph 1 of the United Kingdom report on article 6.

18. Where death is caused by the negligence of another, that person is liable in damages by civil suit in tort initiated in the name of the deceased person by his family or his estate. Compensation is awarded under the provision of the Law Reform (Miscellaneous Provisions) Ordinance, (Cap. 42) and the Fatal Accidents Act, (Cap. 26) as well as general legal principles.

19. Abortion and attempts at abortion are unlawful by virtue of the provisions of the Offences Against the Person Act, (Cap. 54). However, in cases where the life of the mother is in imminent and serious danger doctors may legally abort the foetus.

20. Paragraph 2. By section 2 of the Offences Against the Person Act, the penalty for murder is death by hanging. However, under the provisions of section 11 of the Virgin Islands (Constitution) Order, 1976 (U.K.S.I. 1976, No. 2145), a Mercy Committee is established to advise the Governor in such situations on the question of commutation of sentence. This penalty can only be carried out pursuant to a final judgement given by a competent court.

21. In cases of infanticide and murder the year and a day rule applies.

22. Paragraph 3. The obligations of the British Virgin Islands in relation to the crime of genocide is regulated by the Genocide Act, 1969 (UK) and the Extradition (Genocide) Order (1970, No. 147) imperial.

23. Paragraph 4. The right to seek pardon and the power to grant pardon is provided by section 10 of the Constitution which said power is conferred on the Governor acting after consultation with the Mercy Committee and is applicable to all offences.

24. The right to seek to have one's sentence commuted is also provided by section 11 of the Constitution which establishes a Mercy Committee for that purpose.

25. Paragraph 5. By the Sentence of Death (Expectant Mothers) Act, (Cap. 21) a sentence of death cannot be passed upon a pregnant woman. In such cases the sentence to be passed on her shall be one of life imprisonment.

26. By the Proviso to section 3 (1) of the Offences Against the Person Act a sentence of death cannot be pronounced on or recorded against a person convicted of an offence, if it appears to the court that at the time when the offence was committed he was under the age of 18 years.

27. Paragraph 6. The abolition of capital punishment has never seriously been an issue in this Territory and there appears to be no urgency as to its abolition; but instead a quiet willingness for its retention.

Article 7

28. As in the United Kingdom the right not to be subjected to torture or other forms of ill-treatment or punishment is protected both by the criminal law and by the civil law. Thus the general outline in paragraphs 1 and 2 of the United Kingdom report on this article apply mutatis mutandis.

29. In addition to the liability of police officers to prosecution for any criminal offences they commit, they are liable to be dealt with in internal disciplinary proceedings under the Police Act, (Cap. 142) and the Police Regulations made under section 71 of the principal Act. Under regulation 6 (a) a police officer may suffer disciplinary actions where he assaults any other member of the police force; or, under regulation 6 (h) (i), without good or sufficient cause makes any unlawful or unnecessary arrest; or, under regulation 6 (h) (ii), uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty.

30. The hearing of such matter is conducted on complaint or charge by any Gazetted Police Officer or any Magistrate, on the written request of the Superintendent. By regulation 8 the police officer charged is entitled to be represented by counsel or solicitor at the hearing.

31. The penalties range from caution or reprimand to dismissal from the force. Appeals lie by virtue of section 35 (1) within seven days to the Governor.

32. Further, private prosecutions may be instituted in the Magistrate's Court by complaint on oath by one person against another. This is subject, however, to the overriding powers of the Attorney-General as provided in section 24 (1) (b) and (c) of the Constitution, to take over and continue or to discontinue any criminal proceedings.

33. As in England a confession by an accused which is found by the judge to have been obtained by oppression, e.g. violence, is inadmissible as evidence against the person who made the confession. This question is decided in a jury trial by the judge after hearing evidence and argument on the voir dire.

34. In the British Virgin Islands corporal punishment of prisoners is permitted by section 11 of the Prison Ordinance, (Cap. 166) in certain specified circumstances. Such punishment may only be provided for in cases of mutiny, incitement to mutiny or gross personal violence to an officer of a prison when committed by a male prisoner; and, shall not be inflicted except by order of the Visiting Committee made at a meeting at which not less than three members are present, or by a magistrate appointed by the Governor in that behalf.

35. In the case of a person over 21 years of age the maximum punishment is eight strokes with a cat-o-nine tails: in the case of a juvenile the maximum punishment is 12 strokes with a rod of tamarind.

36. Where corporal punishment is inflicted no further punishment by way of confinement in cells or restricted diet can be imposed.

Article 8

37. Slavery was abolished in the British Virgin Islands in 1834. Labour may be freely contracted for and such contracts may be terminated on due notice. Further, there are certain minimum standards laid down in the Labour Code Ordinance, 1975 which cannot be abrogated by contract.

38. The right of action for false imprisonment ensures the protection of the subject from wrongful detention or confinement for any purpose whatsoever. This constitutes a crime at common law.

39. Any unlawful use of force or attempted use of force to the person of another is in the first case at least a battery and in the second an assault, both of which are crimes at common law and under the provisions of Offences Against the Person Act. The user of such violence may be subjected to a civil suit for damages.

40. The common law remedy of habeas corpus for unlawful detention is available to all and sundry whether they be detained unlawfully in Her Majesty's Prison or in private custody. (See Order 45 of Rules of Supreme Court, 1970.)

41. Within the jurisdiction of the British Virgin Islands sentence of imprisonment with hard labour may be imposed at the discretion of the Court for crimes for which such an option is expressly provided.

Article 9

42. The liberty and security of the subject is fundamental to the common law of England and hence to the common law of the British Virgin Islands. Specifically, there is the right at common law to freedom from arbitrary arrest.

43. Where a person is wrongfully arrested or detained he may bring a civil action for damages for false imprisonment, or he may by writ of habeas corpus obtain his release, or the person doing the arresting or detaining may be prosecuted criminally. In this regard any restraint of the liberty of the subject regardless of what means has been employed to effect the detention or where such detention is being effected, amounts to an imprisonment.

44. Generally, the powers of arrest by police officers are as laid down in section 22 of the Police Act.

A police officer may arrest without a warrant:

(a) any person whom he suspects upon reasonable ground of having committed a felony;

(b) persons charged by another person with committing an aggravated assault provided he has good reason to believe that such assault has been committed although not within his view and that by reason of the recent commission of the offence a warrant could not have been obtained;

(c) any person who commits a breach of the peace in his presence;

(d) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(e) any person in whose possession anything that may reasonably be suspected to be stolen property is found or who may reasonably be suspected of having committed an offence with reference to such thing;

(f) any person whom he finds lying or loitering in any highway, yard or other place between the hours of 8 p.m. - 5 a.m. and not giving satisfactory account of himself;

(g) any person whom he finds in any highway, yard or other place between 8 p.m. and 5 a.m. and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(h) any person found between 8 p.m. and 5 a.m. having in his possession without lawful excuse any implement of housebreaking; and

(i) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

45. Additionally, a police officer has a general power to arrest without warrant and with the assistance of any person whom he shall call to his assistance, any person who within view of the said police officer offends in any manner against any law and whose name and residence are unknown to such police officer and cannot be ascertained by him.

46. In certain limited circumstances specified in sections 3, 4 and 5 of the Criminal Procedure Act, a private citizen may arrest another citizen without a warrant. In such circumstances the person arrested must be forthwith taken before a magistrate to be dealt with according to law. Also in most instances where a citizen may arrest another without warrant the offence must have been committed within his view.

47. By section 22 (3) of the Police Act, a police officer may arrest any person in respect of whom a warrant has been lawfully issued notwithstanding that the officer does not have the warrant on his person at the time of effecting the arrest, but the warrant shall on demand be produced as soon as practicable after the arrest. By section 26 (2) of the last mentioned act where a person is apprehended between the hours of 8 p.m. and 5 a.m. he shall, in addition to his right to bail, be brought before a magistrate as soon as practicable after his apprehension. However, by section 6 of the Criminal Procedure Act, where the person is arrested without warrant for loitering or lying in any highway, yard or other place during the night and the officer has good cause to suspect him of having committed, or being about to commit a felony, the person arrested shall not be detained longer than 48 hours without being brought before a magistrate.

48. As a general rule a person arrested must be informed of the true reason for his arrest. Where this is not done he need not submit himself to the custody of the person purporting to arrest him and may, within reason, use such force as is necessary to maintain his freedom. Further, he may seek remedies for false imprisonment.

49. The Magistrate's Code of Procedure Act lays down the circumstances in which a magistrate can issue his summons or warrant.

50. The requisite forms are prescribed by the Magistrate Court Rules and are worded so as to give the person charged and/or arrested reasonable information as to the nature of the offence he is charged with having committed.

51. In the laws and procedure of the British Virgin Islands it is not a general rule that persons awaiting trial are to be detained in custody. Under the provisions of sections 25 and 26 of the Police Act a person arrested shall be admitted to bail either in his own recognizance or by sureties. However, by section 27 of the said Act no police officer shall take bail for any person charged with a capital felony such as murder or treason.

52. Further by section 60 (1) of the Magistrate's Code of Procedure Act any person charged with a misdemeanour punishable with fine or imprisonment for any term not exceeding two years shall (as of right) be entitled to be admitted to bail. Where, however, the offence is a misdemeanour punishable otherwise than aforesaid or is a felony the Magistrate may in his discretion admit the accused to bail. The Magistrate shall not grant bail to any person charged with treason, misprison of treason, treason, felony or murder.

53. Where bail has been refused by a magistrate the person arrested may apply to a judge of the Supreme Court to be admitted to bail. The judge may then either grant bail or order the magistrate to admit that person to bail as the case may be. Also during the trial of the matter the accused person is entitled on adjournment of his trial to be admitted to bail or to continue on bail in accordance with the rules and principles stated above.

54. Anyone deprived of this liberty by arrest or detention may by writ of habeas corpus have himself brought before a court to have the question of the lawfulness of his detention determined. He may also bring a civil suit for damages for false imprisonment against the person who detained him unlawfully, or against anyone who procures his arrest or imprisonment by means of criminal proceedings which are instituted maliciously and without reasonable cause.

Article 10

55. The control and regulation of prisons is governed by the Prison Ordinance, Cap. 166 and the Prison Rules made under that Ordinance.

56. By section 6 of the Prison Ordinance and Rule 3 of the Rules the Governor shall appoint a Visiting Committee for the prison consisting of three or more justices of the peace. The Rules prescribe the functions of the Visiting Committee and require the Committee to pay visits to the prison and hear any complaints which may be made by the prisoners and periodically to consider the character, conduct and prospects of each prisoner and report to the Governor any matter which they consider expedient to report.

57. Unconvicted prisoners are defined by Rule 183 of the Prison Rules to include persons committed to prison for safe custody in any of the following circumstances:

- (a) on commitment for trial for an indictable offence;
- (b) pending the preliminary hearing before a magistrate of a charge of any indictable offence, or pending the hearing of any information or complaint;
- (c) on commitment to await the hearing of an appeal or who, after admission as a convicted prisoner shall enter an appeal against such conviction or sentence; or
- (d) on commitment to await extradition.

58. To this class of prisoners separate treatment is prescribed by the Rules than those for convicted prisoners. These are set out in Rules 184-198 of the Prison Rules. However, it may not be practicable having regard to the space available at the prison to keep unconvicted prisoners at all times separate from convicted prisoners.

59. Rule 159 provides that juvenile prisoners sentenced to imprisonment shall be kept separate from all other prisoners as far as possible.

60. When a person enters the prison the Medical Officer is required to conduct a physical and mental examination of that person with the view, inter alia, to ascertaining what form of work or duties that prisoner is capable of performing without hampering or materially affecting his health. By Rule 152 every prisoner shall, unless excused on medical grounds, be employed in useful work. The work is divided into three classes in diminishing order of physical stress and work required of women prisoners is specifically provided for. It is further provided that no prisoner shall be employed in any disciplinary capacity or in the service of any other prisoner.

61. It is the Government's policy that the essential aim of the penal system is reformation and social rehabilitation.

62. As stated earlier in this report corporal punishment may be inflicted on persons confined in prison except where that person is an unconvicted prisoner, a female prisoner or a prisoner who, upon examination by the Medical Officer, is in his opinion a person whose health would be seriously endangered by such punishment.

Article 11

63. Under the laws of the British Virgin Islands imprisonment of any person because of his failure to fulfil a contractual obligation is unlawful. Such a person would be entitled to the remedies of habeas corpus or damages for false imprisonment. However, a person may be imprisoned upon his failure to pay a fine imposed by a competent court where an alternative sentence of imprisonment was prescribed.

Article 12

64. Though the right to freedom of movement and of choice of residence is not prescribed in the Constitution, generally no interference with this liberty is permitted in the British Virgin Islands. This right, however, is subject to the right of other citizens to exclude persons trespassing on their land or property, in which case reasonable force may be used to expel the trespasser. Where free movement is prevented unlawfully, habeas corpus proceedings will lie as well as damages for wrongful detention.

65. In the British Virgin Islands there are no laws interfering with the freedom of the subject to leave the Territory regardless of the fact that the country may or may not be his own. The one exception to this rule is in the case of persons lawfully confined in the prison where the act of leaving the country would constitute the offence of escaping prison or lawful custody.

66. Any restrictions on those rights relate to arrest and detention and have been dealt with already in this report.

67. Persons who have a right under the Immigration and Passport Ordinance, 1977 (No. 9 of 1977) to enter the British Virgin Islands cannot be lawfully prevented from doing so. However, such a person must, by documents or otherwise prove that he has this right. In other words he must be able to establish that he is:

(a) a person deemed to belong to the Virgin Islands as defined in section 2 (2) of the Constitution and repeated in section 3 of the above-mentioned Ordinance;

(b) a person entitled to be resident under section 18 of the said Ordinance;

(c) a person enjoying relevant diplomatic or consular or other similar **privileges** by virtue of any law;

(d) a person serving as a member of Her Majesty's Forces on duty in the Territory;

(e) a person employed in the service of the Government of the Territory;

(f) a person employed in the service of such Caribbean interregional organizations as the Minister may, by Notice in the Gazette designate;

(g) a person employed in the service of any country in the Commonwealth engaged upon official duties in the Territory;

(h) a person whom an immigration officer is authorized by the Governor to treat as entitled to land in the Territory; or

(i) the wife or child of any person coming within category (d), (e), (f) or (g) whether travelling with or separately from such person.

Article 13

68. Under the provisions of section 40 of the Immigration and Passport Ordinance, 1977 the Governor may order the deportation from the Territory of any person, other than a person deemed to belong to the Territory, who:

- (a) has landed or remained in the Territory illegally;
- (b) has been convicted of an offence under the said Ordinance or of any other offence within the Territory punishable with imprisonment for three months or more; or
- (c) is a person whose presence in the Territory would, in his opinion, acting after consultation with the Chief Immigration Officer, be undesirable and not conducive to the public good.

69. Where the person to be deported is a British subject the Governor can make the order only in respect of the person:

- (a) who is a convicted person and the court has certified to the Governor that he has been convicted and recommends deportation;
- (b) who is an undesirable person; or
- (c) who is a destitute person.

70. Where the British subject has been continuously resident in the Territory for 10 years immediately preceding he may be deported only in special or aggravated circumstances.

Article 14

71. The various rights stated under this article are with few differences realized in the British Virgin Islands in the same way and by the same principle as they are realized and enforced in England. Therefore most of the outline in the United Kingdom report dealing with this article applies, mutatis mutandis, to the situation in the British Virgin Islands and it is not intended to reiterate them again in this report. However, the minor differences will be pointed out as well as the relevant local enactments pertaining to those rights.

72. Paragraph 1. As in the United Kingdom all courts and tribunals in the British Virgin Islands are open to all persons on an equal basis regardless of race, creed, colour, nationality or religion. Similarly, from a procedural point of view, an infant may institute and carry on proceedings by his next friend or guardian.

73. All criminal proceedings are open to the public with the exception of proceedings under the Official Secrets Acts, (a United Kingdom Act), specifically extended to the Territory. However, by section 41 of the Magistrate's Code of Procedure Act, a magistrate may in his discretion, on a preliminary inquiry into an indictable offence, order that no person shall have access to be or remain in the courtroom, the counsel or solicitor of any person then being in court as a prisoner only excepted, without the consent of the magistrate if it appears to him that the ends of justice will be best answered by so doing.

74. In relation to the impartiality of judicial proceedings the views expressed at paragraph 3 of the United Kingdom report on article 14.1 reflect accurately the British Virgin Islands position.

75. Paragraph 2. The presumption of innocence until guilt be proven is as fundamental a part of the judicial process in the British Virgin Islands as in the United Kingdom and the outline in the United Kingdom report on this provision is equally applicable.

76. Paragraph 3. The views in the United Kingdom report on paragraphs 3 (a), (b), (d) (1) and (2), (e), (f) and (g) are all relevant statements of the true position in the British Virgin Islands as regard those rights stated in the Covenant.

77. As regards paragraph 3 (c), the right to be tried without undue delay is well recognized in the laws of the British Virgin Islands. By section 56 of the Magistrate's Code of Procedure Act, (Cap. 45) where at the conclusion of a preliminary inquiry into an indictable offence the magistrate commits the accused to stand trial he shall commit him for trial at the next sitting of the High Court; or if the day of committal be so near the day for the holding of the next sitting of the High Court that in the opinion of the magistrate it would not be practicable for the case to be tried by such court at that sitting, it is lawful for the magistrate to commit the accused to the sitting of the High Court next following.

78. Under paragraph 3 (d) - on the question of legal aid - an accused person is entitled to legal aid for capital offences only. No general legal aid programme or facilities are available in respect of other matters and offences and no legal aid is provided for in civil proceedings. By section 48 of the West Indies Associated States Supreme Court (Virgin Islands) Ordinance, 1968 (No. 6 of 1968), the Court of Appeal may at any time assign to an appellant who has been sentenced to death a solicitor and counsel or counsel only, in an appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid. Also a person may appeal to the Privy Council in forma pauperis.

79. Paragraph 4. Under section 43 of the Magistrate's Code of Procedure Act, where a child (i.e. person under age 14 years) or young person (i.e. person who is 14 years but under 16 years) is charged with an indictable offence other than homicide the magistrate may, without consulting the parent or guardian of the child or young person, deal with him summarily unless he is jointly charged with some other person who is not a child or young person who is committed for trial, in which case the magistrate may, if in the interests of justice he thinks it necessary so to do, also commit the child or young person for trial.

80. By section 3 of the Juvenile Act (Cap. 38) it is conclusively presumed that no child under the age of 8 years can be guilty of any offence.

81. The Juvenile Court is established under section 2 of the Juvenile Courts Act, Cap. 39 and consists of a magistrate and such other persons, called "assessors", as may be nominated by the Governor. That court has power to hear any offence punishable on summary conviction brought against a young person or child and the Governor may make rules regulating the procedure to be followed in the court.

82. In a Juvenile Court no person other than the members and officers of the court and the parties to the case, their counsel or solicitors, and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend.

83. Generally, every court in dealing with a juvenile who is brought before it as an offender shall have regard to the welfare of the juvenile and shall, if it deems it necessary, take steps for removing the juvenile from undesirable surroundings.

84. Additionally, there are special provisions relating to the trial of juveniles when charged with adults or with an indictable offence; to the giving of evidence by a child of tender years and to clear the court when a juvenile is giving evidence.

85. Paragraph 5. Any person convicted of an offence on indictment may appeal against the conviction and/or sentence to the Court of Appeal and thereafter with leave to the Privy Council.

86. By section 155 (2) of the Magistrate's Code of Procedure Act, any person convicted by a magistrate may appeal to the Court of Appeal. Further by section 155 (3) of the said act there is a right to appeal to the Court of Appeal from any judgement or order of a magistrate.

87. Appeals from convictions by the magistrate where the accused has pleaded guilty can only be in respect of sentence as is the case with convictions of the High Court.

88. Paragraph 6. In relation to this matter the position as stated in paragraphs 1 and 2 of the United Kingdom report on this provision state accurately the position in the British Virgin Islands on this issue, and may be adopted mutatis mutandis.

89. Paragraph 7. Similarly the principles stated in the United Kingdom report on this provision of the Covenant accurately state the law on this latter in the British Virgin Islands. However, it should be added that the principle of autrefois acquit does not apply to preliminary inquiries which are not considered to be "trials".

Article 15

90. It is a fundamental principle of statutory interpretation that legislation should not be interpreted so as to make an act a crime which was not unlawful at the time when the act was done retrospectively unlawful.

91. The power of the local legislature to enact such legislation is doubtful and no such statute can be found in the laws of the British Virgin Islands.

Article 16

92. There are no cases in the British Virgin Islands in which a person may be deprived of the protection of the law.

Article 17

93. There is no general statutory right to privacy. However, no public authority or private citizen has any right to interfere with a person's private and family life, his home and his correspondence. Any interference with these rights must be provided by law. If not so provided an interference may give rise to a civil action in trespass for damages or for malicious destruction of property. Thus any unauthorized entry on land whether by a public authority or private citizen is unlawful and amounts to a trespass which may be restrained by an injunction as well as damages.

94. By section 38 of the Magistrate's Code of Procedure Act, where a magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any larceny or other felony has been committed is in any place or places he may grant a warrant to search such place or places for such property.

95. Similarly, under section 7 of the Juvenile Act, where a magistrate has reasonable cause to suspect that a juvenile has been or is being assaulted, ill-treated or neglected, or that any of certain offences has been or is being committed in respect of the juvenile, he may issue a warrant authorizing any police officer to search for the juvenile and/or to remove the juvenile to a place of safety. Any police officer so authorized by warrant may enter (if need be by force) any house, building or other place specified in the warrant and may remove him therefrom.

96. Other statutory provisions empowering entry on private land are: Land Surveyors' Ordinance, 1970, (No. 3 of 1970), section 16 (1); Electricity Ordinance, 1970, section 9 (1); Public Health Ordinance, 1976, (No. 10 of 1976), section 16; and Cinematographs Ordinance, Cap. 211, section 15.

97. As regards correspondence, private rights are protected by the Post Office Act (Cap. 162), and Post Office Rules, 1976. But by section 15 of Offences Against the Person Act, Cap. 54 it is a felony to send letters threatening to murder.

98. The control of prisoners' correspondence is provided for by Rules 173, 180 and 190 of the Prison Rules.

Article 18

99. There are no restrictions imposed by law on freedom of thought, conscience and religion or on freedom to change one's religion or belief.

100. This freedom is restricted by law only to the extent that it is necessary to secure public safety, order, health or morals or the rights of others.

101. Any interference with these freedoms will give rise to civil or criminal wrong at common law, and, by section 34 of the Offences Against the Person Act it is an offence to wilfully disturb, interrupt, or disquiet any assemblage or persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behaviour, or by making a noise, either within the place of such meeting, or so near it as to disturb the order, or solemnity, of the meeting. Such person found committing this offence may be arrested on view by any peace officer present at such meeting, or by any other person present thereto verbally authorized by any Justice of the Peace present at the said meeting.

102. Further, by section 33 of the said act it is an offence for anyone, by threats or force, to unlawfully obstruct or prevent, or endeavour to obstruct or prevent, any clergyman or other minister in, or from, celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, school-house, or other place used for divine worship, or in, or from, the performance of his duty in the lawful burial of the dead in any churchyard, or other burial place.

103. By section 5 of the Education Ordinance, 1977 (No. 21 of 1977), no child shall be refused admission into any Government or assisted school on account, inter alia, of the religious persuasion of such child or of either of his parents. Section 27 of the said Ordinance provides that in every Government and assisted private school religious instruction shall be given; and by sections 27 (1) and 28 (1) each morning at the opening of every such school, there shall be an act of collective worship which shall be Christian in character but not distinctive of any particular religious denominations. Non-Christians are not obliged to attend religious instruction and acts of collective worship. But in practice the question does not arise as the school population at this time is about 100 per cent Christian.

Article 19

104. There exist no restrictions on the right to hold opinions. However, the freedom of expression of one's opinions or beliefs is restricted in certain specified circumstances, e.g. statements in contempt of court, blasphemous, seditious, defamatory of another person, in breach of confidence or likely to invoke a breach of the peace.

105. Some of the legislation restricting the freedom of expression are as follows:

- (i) Official Secrets Act 1911-1939, (United Kingdom Legislation);
- (ii) Public Order Ordinance, 1970 (No. 18 of 1970), sections 7 and 8;
- (iii) Libel and Slander Act, (Cap. 43);
- (iv) Sedition and Undesirable Publications Act, (Cap. 70);
- (v) Cinematographs Ordinance, (Cap. 21);
- (vi) Newspaper Surety Ordinance, (Cap. 220), section 10;
- (vii) Offences Against the Person Act, (Cap. 54), section 15;
- (viii) Perjury Act, (Cap. 55); and
- (ix) Prison Rules (Cap. 166) Subsidiary Legislation.

106. There is no Government censorship or control of the press or over any programme broadcast.

Article 20

107. There is, generally, no prohibition by law of the distribution of propaganda for war. However, if any such propaganda brings the Sovereign or Government into hatred or contempt or excites disaffection against Her Majesty or the Government it may amount to sedition which is an offence by virtue of section 4 of the Sedition and Undesirable Publications Act, (Cap. 70).

108. If the propaganda were intended or tended to cause a breach of the peace a prosecution may lie. Similarly, a prosecution may lie under the Small Charges Act, (Cap. 72), section 8 and Offences Against the Person Act where the language used was threatening, abusive or insulting.

109. The criminal law does not expressly prohibit the advocacy of national, racial or religious hatred in the terms provided in paragraph 2 of this article. However, in certain circumstances such advocacy may amount to sedition, or breach of the peace or to an offence under the Public Order Ordinance, 1970, (No. 18 of 1970) or to defamation of character.

Article 21

110. The right to freedom of peaceful assembly is a fundamental common law right and the only restrictions on this right are those prescribed by law in the interest of the community as a whole, and for the protection of rights and freedoms of others. This right has been restricted by the Public Order Ordinance, 1970, the Riot Act, (Cap. 69) and the Small Charges Act, (Cap. 72) where such assemblies tend to a breach of the peace.

Article 22

111. The right to freedom of association is only restricted in the British Virgin Islands by legal provisions concerned with public safety, national security and the prevention of crime. Any organization or association formed for the purpose of usurping the function of the police or of the armed forces of the Crown, or for the use or display of physical force in promoting any political object is unlawful.

112. The formation and legality of trade unions is governed by the Trade Unions Act, (Cap. 258). By section 4 (1) of that act the objects of a trade union shall not be unlawful by reason merely that they are in restraint of trade. However, every trade union must be registered.

113. Government established officers may be members of a trade union and may attend, speak and vote at private meetings but may not hold office nor speak or vote at public meetings of the Trade Union if its objects are wholly or partly political.

Article 23

114. The position of the family as the natural and fundamental group unit of society is recognized and protected by local law.

115. The solemnization of marriages and the formalities required therefor are laid down in the Marriage Ordinance, (Cap. 235). During the subsistence of the marriage both parties have certain rights and duties imposed by law. A breach of any of these rights may give rise to an action for loss of consortium or wilful neglect to maintain. Also the rights of each spouse vis-à-vis third parties are protected. By section 6 of the Evidence Act, (Cap. 24) one spouse is a competent, though not a compellable, witness against the other spouse in criminal proceedings brought against the latter.

116. By the Fatal Accidents Act, (Cap. 26) where a person has died by the wrongful act or neglect or default of another and such an act would, had that person survived, entitled him to maintain an action and recover damages in respect thereof, that person causing death shall be liable to an action for damages brought for the benefit of the wife, husband, parent and child of the person whose death was caused.

117. Under section 51 of the Offences Against the Person Act, it is an offence to take away or detain any child under the age of 14 years with intent to deprive its parent of its possession, or to harbour a child knowing it to have been obtained in this way. Section 50 of the said Act makes it an offence to unlawfully take, or cause to be taken any unmarried girl under the age of 16 years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.

118. Termination of a marriage may take place either by death of one of the parties or by decree of dissolution, divorce or nullity pronounced by a court of competent jurisdiction. An application for a decree nisi will not be heard within three years of the marriage except by special leave of the court in cases of exceptional hardship and depravity.

119. To contract a valid marriage in the British Virgin Islands the following conditions must be satisfied:

(a) one party must be female and the other male;

(b) neither party must be already married;

(c) both parties must be over the age of 16; and

(d) the parties must not be related within the prohibited degrees of consanguinity or affinity.

120. In addition, where persons are not resident or domiciled in the British Virgin Islands there is a residence requirement of three days for a Special Governor's Licence and 14 days for the ordinary licence in respect of one party.

121. It is essential for a valid marriage that the parties should consent to marry one another. This stems for the contractual nature of the bond. Where, therefore, a marriage is entered into by mistake or force it is void ab initio. However, there is a strong presumption of consent where two persons of full age and mental capacity go through a ceremony of marriage. This presumption can be rebutted only by strong and clear evidence as to lack of consent or some other factor which viciates the marriage.

122. Fraudulent misrepresentation or concealment does not, apart from duress or mental disorder and apart from concealment of pregnancy by another man or of a venereal disease in a communicable form, affect the validity of a marriage. The primary test is whether the consent was freely given.

123. The following steps have been taken to ensure equality of the rights and responsibilities of spouses:

(a) by the Magistrate's Code of Procedure Act, section 114 a magistrate has power to make a variety of orders during the subsistence of the marriage affecting the relationship and rights (e.g. maintenance) of each spouse as well as relating to the custody of children of the marriage under the age of 16;

(b) similarly under the Matrimonial Causes Act, Cap. 48 a court on hearing a petition for divorce, nullity or judicial separation has wide powers in relation to maintenance, alimony and settlement of property.

Article 24

124. Generally children in accordance with their status as minors enjoy a wide measure of protection under the law of the British Virgin Islands. Most of these provisions have been dealt with in other parts of this report.

125. Contractually, infants are protected from contractual obligations except where the subject-matter of the contract falls within the category of "necessaries" having regard to the infant's station in life. Where the contract is not for necessities it is unenforceable by the other party against the infant.

126. On the question of emigration by section 4 of the Children (Emigration) Ordinance, (Cap. 113) no child (under 16 years and a British subject) shall be allowed to leave the Territory for the purpose of proceeding to any country to which that Ordinance applies unless the child is accompanied by a parent or legal guardian, or unless either of those persons, or the person who has for the time being the charge of or control over the child, has obtained the written permission of the Governor.

127. Section 5 of the Education Ordinance, 1977 (No. 9 of 1977) provides that no child shall be refused admission into any Government or assisted school on account of the religious persuasion, race or language of such child or of either of his parents.

128. The Labour Code Ordinance, 1975 (No. 7 of 1975) at section E3 provides that no child shall be employed or shall work in any public or private agricultural or industrial undertaking, or in any branch thereof, or on any ship, other than an undertaking or ship on which only members of the same family are employed, and any person who employs any child or permits him to work in contravention of that section is guilty of an offence. By section E4 any parent or guardian who has conducted to the commission of that offence shall himself be guilty of an offence.

129. Further, by section E5 no young person shall be employed unless he has been found fit for the job after a medical examination and he shall be under medical supervision until no longer a young person. There are restrictions on employment of young persons within the compulsory school age and also during the night.

130. The Juvenile Act, (Cap. 38) and the Juvenile Court Act, (Cap. 39) contain a number of provisions designed for the protection of children and particularly the prevention of cruelty to them.

131. The Adoption of Children Act, (Cap. 232) provides for the adoption of children with the primary principle being the welfare of the child. To ensure this a number of restrictions are provided, e.g. in section 3 of the said Act.

132. However, under the Magistrate's Code of Procedure Act there exists some discrimination between legitimate and illegitimate children as regards maintenance. This distinction is also highlighted by the Legitimacy Act, Cap. 234. Also there is some discrimination among legitimate and illegitimate children as regard their right of succession to property of parents.

133. The provisions of the Offences Against the Person Act, Cap. 54 also provides for the protection of children by specifying certain offences in relation to children as previously stated.

134. By section 3 of the Juvenile Act, Cap. 38 no child under the age of 8 years can be guilty of an offence.

135. Under section 14 (1) of the Registration of Births and Deaths Ordinance, (Cap. 239) it is the duty of the father or mother or the occupier of the house or tenement where the child is born, any person present at the birth, or having charge of the child to register the birth within 21 days of birth of the child. Some distinction is drawn between legitimate and illegitimate children as regards the registration of births.

136. Every child born within the British Virgin Islands is deemed to belong to the Territory by virtue of the Constitution and the Immigration and Passport Ordinance, 1975; and is a citizen of the United Kingdom and colonies.

Article 25

137. Section 25 of the Virgin Islands (Constitution) Order 1976 provides that there shall be a Legislature of the Virgin Islands which shall consist of Her Majesty and a Legislative Council.

138. By section 28 of the Constitution a person is qualified to be elected as a member of the Legislative Council if he:

- (a) is a British subject of at least 21 years of age;
- (b) is deemed to belong to the Virgin Islands; and
- (c) is otherwise qualified as a voter under section 31 of the said Constitution.

Under section 31 a person qualifies as a voter if he:

- (a) is a British subject;
- (b) is deemed to belong to the Virgin Islands;
- (c) is at least 18 years of age; and
- (d) either:
 - (i) is domiciled and resident in the Virgin Islands on the qualifying date; or
 - (ii) on that date is domiciled in the Virgin Islands and resident in the United States Virgin Islands:

Provided that in either of the latter two cases he need not be a person deemed to belong to the Virgin Islands.

139. A person becomes disqualified as a voter if on the qualifying date:

- (i) he has been certified insane or of unsound mind;
- (ii) he is disqualified under any other law from being registered as a voter by reason of having been convicted of an offence relating to elections; or
- (iii) is under sentence of death or serving imprisonment for a term exceeding 12 months.

140. Further, a person becomes disqualified to be an elected member of the Legislative Council who:

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or State;
- (b) holds, or is acting in, any public office;
- (c) is a minister of religion;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;

(e) is a person certified insane or of unsound mind;

(f) is under sentence of death or imprisonment for a term exceeding 12 months, or imprisonment the execution of which has been suspended;

(g) so disqualified by any law in force in the Virgin Islands by reason of conviction for or reported guilty of any offence relating to elections; or

(h) is a party to, or a partner in a firm or a director or manager of a company which is a party to any contract with the Government for or on account of the public service, and has not, within 14 days before his nomination as a candidate, published in the Gazette or a newspaper circulating in the Virgin Islands a notice setting out the nature of such contract and his interest, or the interest of such firm or company, therein.

141. In accordance with the Elections Ordinance, 1977 (No. 7 of 1977) voting on a general election, which shall be held every four years, shall be by secret ballot.

142. Under sections 9 and 52 of the Constitution the power to make appointments to public offices and to remove and exercise disciplinary control over persons holding or acting in such offices vests in the Governor, acting after consultation with the Public Service Commission (see section 51 of Constitution).

143. However, before appointing any person to the office of a Permanent Secretary or Head of Department the Governor shall, in addition, consult with the Chief Minister.

144. In relation to legal officers of the Crown these are appointed by the Governor, acting after consultation with the Judicial and Legal Service Commission (see section 55 of Constitution).

Article 26

145. The principle of equality before the law is fundamental to the Constitution and judicial system of the British Virgin Islands. No person can be deprived of this protection other than by express legislation of the Legislature.

Article 27

146. There are no legal restrictions in the British Virgin Islands on the enjoyment by any group of persons of the rights as to culture, religion and language which are the subject of this article other than those already dealt with under Article 22 (2) pertaining to the right of association. All persons regardless of group are entitled to equal protection before the law.

ANNEX D

REPORT BY THE CAYMAN ISLANDS UNDER ARTICLE 40 (1) (a)

Introductory

1. The International Covenant on Civil and Political Rights does not itself have force of law in the Cayman Islands which are a dependency of the United Kingdom. Although there is no recital of human rights incorporated in the Cayman Islands (Constitution) Order 1972 they are widely respected and protected. The Cayman Islands are, as a dependency of the United Kingdom, bound by the majority of international covenants affecting the economic, social and cultural rights of its people. It is, for example, bound by the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and accepts the competence of the European Commission of Human Rights to receive individual petitions and the compulsory recognition of the jurisdiction of the European Court of Human Rights. The Cayman Islands, as a dependency of the United Kingdom, is also bound by the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Moreover the Royal Instructions 1972 direct that laws affecting certain civil rights, including laws on divorce, the imposition of differential duties, affecting obligations imposed on the United Kingdom and its dependencies by treaty (and including obligations in civil and political rights), any disabilities, restrictions or advantages pertaining to individual communities or religions, shall not normally be assented to without prior instruction from a Secretary of State of the United Kingdom.

2. The laws of the Cayman Islands are carefully drafted so as to protect and respect the rights and freedoms of the individual. The report contains summarized explanations, under each article of the International Covenant on Civil and Political Rights, of how the Covenant has been implemented in the Cayman Islands.

Articles 2 and 3

3. Apart from the specific measures to secure protection against the type of discrimination mentioned in other articles which are referred to in the comment following on these articles, the measures in the Cayman Islands giving effect to the Convention do not discriminate between individuals on any such basis as mentioned in Articles 2 and 3. There are no armed forces in the Colony. There are civil remedies under the Grand Court Law 1975 and Rules 1976 - 1977 and criminal sanctions under the Penal Code and other laws which guard the individual from unlawful interference with personal liberty or property. Proceedings can also be brought against public authorities and officials under the Crown Proceedings Law (Revised) 1976. Legal aid is available within the limits of the Poor Persons (Legal Aid) Law 1975.

Article 4

4. No derogation in respect of this Article has been made for the Cayman Islands.

Article 5

5. The rights described in this article are fully respected in the Cayman Islands.

Article 6

6. This right is protected by the civil and criminal law. The exceptional cases where the taking of life may occur are as stated in the United Kingdom report.
7. The death penalty has not been abolished in the Cayman Islands but has not been invoked since 1946. The provisions of the Penal Code and the Genocide Law (Revised) are in accordance with the article and the conventions referred to therein.
8. The Cayman Islands Genocide Law (Revised) is in accordance with the Convention.
9. Section 13 of the Royal Instructions 1972 conveys powers for the Governor to grant pardon or reprieve in capital cases and section 53 of the Constitution 1972 gives power to commute any sentence. The Criminal Procedure Code 1975 gives a right to the person sentenced to appeal to the courts before seeking pardon or commutation of sentence.
10. Sentence of death on a person below the age of 18 or on a pregnant woman is unlawful by virtue of section 22 of the Penal Code 1975.
11. The possibility of abolishing capital punishment was last discussed with members of the Legislative Assembly in 1975 and 1977.

Article 7

12. The Penal Code 1975 makes the practices detailed in Article 7 unlawful. There are no statutory provisions enabling the imposition of corporal punishment as a judicial sentence.

Article 8

13. Slavery or servitude, forced or compulsory labour does not exist in the Cayman Islands and the provisions of the Penal Code 1975 dealing with kidnapping, abduction, wrongful confinement and unlawful compulsion against the will of a person (sections 206 - 210) could be invoked if necessary. The right to apply for a writ of habeas corpus as described in the United Kingdom report exists in the colony.

Article 9

14. The procedures for arrest and detention in the colony are in conformity with paragraphs 1 - 4 of this article.

Article 10

15. The Imprisonment Law 1975 and Juveniles Law 1975 enable regulations to be made ensuring the proper treatment of adults or juveniles on remand or under detention. The Imprisonment Law enables prisoners to serve sentences at weekends, if so ordered by the court of sentence, to be granted weekend leave after a period of exemplary conduct or, if so ordered by the court or agreed to by the court after a period of satisfactory service, serve sentence extra-murally. Regular prison visits are mandatory under the Imprisonment Law and visitors have free access both to prison records and to persons detained in prison. Accused persons are

separated from convicted prisoners but a reservation has been entered regarding the separation of juvenile persons from adults. At present prisoners sentenced for more than six months are transferred to the penitentiary in Jamaica where they come under the Jamaican prison rules and procedures. Periodic visits are paid to Jamaican penal institutions by elected members of the Legislative Assembly. Financial provision has been made in 1978 for the construction of a new prison farm on Grand Cayman which, when completed, will permit all prisoners to carry out their sentences within the colony, and permit the reservation to be lifted regarding the separation of juvenile persons from adult prisoners.

Article 11

16. As in the United Kingdom imprisonment for failure to fulfil a contractual obligation is not permitted by law. Under sections 44 - 46 of the Judicature Law 1975 a party who holds an unsatisfied judgement in a court for payment of a sum of money may obtain a summons requiring the debtor to appear before the court to answer questions respecting the debt. Imprisonment may be imposed by the court for wilfully contracting the debt or liability without having at the relevant time a reasonable expectation of being able to discharge it, or wilfully refusing to pay when it is in his power to do so.

Article 12

17. There is no legal interference with the right of any person resident in the Cayman Islands to freedom of movement or choice of place to reside. There is no restriction of freedom to leave the Cayman Islands except for those lawfully imprisoned or under disability to enter another country by virtue of failing to meet the entry requirements of the country of destination. All Caymanians or persons accorded Caymanian status under the Caymanian Protection Law (Revised) have free right of entry to the colony. A reservation to Article 12.4 was made in respect of the Cayman Islands.

Article 13

18. An administrative procedure has been approved by which the Governor, before taking a final decision on the deportation of an alien, appoints a suitable person to hear the oral representations of the person whose deportation is being considered, who may be represented for the purpose.

Article 14

19. The various laws affecting the judicature, the Grand Court Law 1975, the Criminal Procedure Code 1975, the Juveniles Law 1975 (sections 12 and 13) together with the Court Rules ensure that practice in the colony conforms to the article. As regards paragraph 3(d) a reservation has been entered by the United Kingdom in respect of the Cayman Islands regarding the provisions of the article: however should occasion arise, the Executive Council could be requested to consider the granting of an ex gratia payment to cover legal assistance.

Article 15

20. Legislation is not made retroactively and if it did not conform to United Kingdom practice as set out in the United Kingdom report it is likely to be disallowed by the Secretary of State.

Article 16

21. All inhabitants in the colony are regarded as persons before the law.

Article 17

22. As in the United Kingdom the Cayman Islands rely on actions in the courts for trespass or other interference with rights and the right to privacy has not been enshrined in the law. Rights of intervention are only granted to public authorities or Government departments by law for purposes contemplated under the article. Examples are the Electricity Law 1974, the Mosquito Research and Control Law (Revised), the Telephone Law 1966, the Roads Law 1974 and the Public Health Law 1974. Interference with mail is specifically made an offence under section 25(a) of the Postal Law 1977.

Article 18

23. There is no restriction imposed by law on freedom of thought, conscience and religion or on freedom to change religion or belief. Under section 17 of the Education Law 1968, religious instruction is compulsory in any Government school except that a parent may request that a pupil be wholly or partly excused from attendance at such religious instruction and/or religious worship and this request must be granted. Under Part V of the Penal Code 1975 it is an offence to insult the religion of any class of people, to disturb religious assemblies, to trespass on burial places, to write or utter words with intent to wound religious feelings or to hinder burial of the dead.

Article 19

24. There are no legal restrictions to the holding of opinions. Freedom of expression is qualified only to the extent that the law provides in relation to contempt of court (section 28 of the Grand Court Law 1975), blasphemy (section 113 of the Penal Code 1975), sedition (sections 47 and 48 of the Penal Code 1975), libel and defamation (sections 158, 159 and 58 of the Penal Code 1975) and the Defamation Law (Revised), breach of confidence (the Confidential Relationships (Preservation) Law 1975) and incitement of racial hatred (section 13 of the Public Order Law 1973). Certain publications are unlawful by virtue of prohibition of importation under section 43 of the Penal Code 1975 in conformity with the restrictions to the exercise of this right described in paragraph 3 of this article.

Article 20

25. Under the rights described in Articles 19 and 21 the Cayman Islands Government has enacted the Public Order Law 1973. A reservation has been entered to reserve the right not to amend or introduce further legislation on this subject. Advocacy of hatred in certain circumstances is an offence under the Public Order Law 1973.

Article 21

26. Freedom of peaceable assembly is recognized in the colony. The Public Order Law 1973 forbids assemblies convened with the express object of effecting a breach of the peace and as permitted by this article in the interests of public safety enables measures to be taken for the orderly conduct of processions.

Article 22

27. The Trade Union Law (Cap 171) provides for the usual objects of union formation. There are no restrictions of the right to freedom of association other than prescribed by law as allowable under the article. Members of the police force are not permitted to become members of a trade union but may form a police association with similar objects (section 14 of the Police Law 1976). Members of the Civil Service by non-statutory regulation are precluded from taking an active part in any political arguments or electoral campaign but are free to belong to a political party and to vote. As a dependency of the United Kingdom the Cayman Islands is subject to the provisions of the International Labour Organisation Convention of 1947 covering freedom of association and protection of the right to organize.

Article 23

28. The provisions of this article are fully applicable in the Cayman Islands. The age of marriage and legal requirements for marriage are contained in the Marriage Law (Cap 92) and provisions for terminating a marriage, other than by death, by the Matrimonial Causes Law 1976. There is legal protection for children of the marriage on dissolution under the Matrimonial Causes Law 1976. The rights of spouses during marriage vis à vis third parties, and the right of the surviving spouse or close relative of a deceased married person to sue for damages against a defendant who has wrongfully caused the death are broadly similar to those described in the United Kingdom report. Under sections 119 and 205 of the Penal Code 1975 the rights of minors are safeguarded in relation to parental care and removal from possession of parents without consent.

Article 24

29. Section 4 of the Juvenile Law 1975 makes it a statutory offence for anyone attaining the age of 17 having custody of a juvenile to ill-treat the juvenile in a manner likely to cause unnecessary suffering or injury to health. The same law contains restrictions on employment of children under 12 and of juveniles and states that no child under 8 years can be guilty of a criminal offence. Education is compulsory under the Education Law 1968 for all children of the age of 5 and up to the age of 15. The Registration (Births and Deaths) Law (Cap 148) requires registration of any birth by name within 14 days, and defines who is responsible for notifying the Registrar-General. All children born in the colony of two Caymanian parents, or of parents both of Caymanian status acquire Caymanian status as of right and acquire citizenship of the United Kingdom and Colonies by virtue of the Caymanian Protection Law (Revised) and the British Nationality Act. The law further sets out entitlement to Caymanian status and hence citizenship of the United Kingdom and Colonies for those children born of persons having sufficient connexion with the Cayman Islands to afford them such rights. Provisions are made, for example, for children born in the islands to parents, one of whom possesses Caymanian status: for children born outside the colony to parents one of whom possesses Caymanian status: for a legitimate, illegitimate, stepchild or adopted child of a person of Caymanian status domiciled in the islands: for declaration by the court as to whether a person has acquired Caymanian status by reason of domicile.

Article 25

30. The right to take part in the conduct of public affairs is secured by election of members of the Legislative Assembly. There are no local authorities in the colony. Qualifications and disqualifications for election are set out in sections 18 and 19 of the Constitution and the Election Law (Cap 45). A general election under the Constitution must be held at least once every four years. Voting is by adult suffrage on an electoral roll and by secret ballot.

31. The Governor is advised on the appointments to the Civil Service by the Public Service Commission, the members of which are not subject to nomination by members of the Executive Council or the Legislative Assembly. Article 25 (c) is more strictly applicable to Caymanians and persons possessing Caymanian status rather than to citizens of the United Kingdom and Colonies, deriving citizenship from connexion with the United Kingdom or another Commonwealth country or resident aliens.

Article 26

32. This article is fully honoured in the Cayman Islands. The right to work is, however, qualified by the issue of Gainful Employment Permits issued by the Caymanian Protection Board statutorily appointed under the provisions of the Caymanian Protection Law (Revised). Such permits are not required by Caymanians or persons holding Caymanian status.

Article 27

33. There are no restrictions on the enjoyment by any group of persons of the rights as to culture, religion and language which are the subjects of this article.

ANNEX E

FALKLAND ISLANDS

Report under article 40

Part I: General

1. As in the United Kingdom, the International Covenant on Civil and Political Rights does not itself have the force of law in the Colony. The obligation is also fulfilled here by the provision of safeguards of different kinds operating with the legal system prevailing independently of the Covenant but in conformity with it.

2. The legal rules concerning human rights and freedoms are not embodied in any one legislative instrument. The common law of the Colony derives from that of England (and the Common law of England down to 1900 applies to the Colony) and the safeguards in this field which are enshrined in English law apply equally in the Falkland Islands, and similar rules apply.

Part II: Information in relation to each of the articles in Part I, II and III of the Covenant

Articles 2 and 3

3. There is no discrimination in the Colony between individuals or any of the bases mentioned in these articles. Deprivation of freedom as a punishment inflicted by courts of law is governed by special rules stringently applied in accordance with the law. There are no restrictions on a persons right of recourse to the courts and English law or the local equivalent is applicable.

Article 4

4. No derogations under this article have been made in respect of the Falkland Islands.

Article 5

5. The fundamental human rights enjoyed by persons in the United Kingdom are common to the Falkland Islands and no action has been taken which is aimed at the destruction of those rights and freedom.

Article 6

6. The right to life is recognized and protected by law. The death penalty has been abolished in the Falkland Islands except, as in England, for treason and for crimes of piracy in which violence has been committed (there have never been any such judgements). The Bill of Rights 1688, the Offences Against the Person Act 1861, the Sentence of Death (Expectant Mothers) Act 1931, the Children and Young Persons Act 1933, and the Murder (Abolition of Death Penalty) Act 1965 have been applied to the Colony by local legislation.

Article 7

7. The right not to be subjected to torture or to other forms of cruel, inhuman or degrading treatment or punishment is protected by law. Again, in this respect the relevant laws of England are applicable in the Colony. The very small local

police force, members which also serve as prison officers are additionally subject to a code of discipline. The court rule which in England disallows a confession which is found by the judge to have been obtained by oppression is firmly observed by the courts of the Colony.

Article 8

8. Slavery or servitude does not exist in the Falkland Islands. All labour is given freely under service contracts. The right of action and redress for false imprisonment exists in the Colony. The Slave Trade Act 1834 has been extended to the Colony. Imprisonment with hard labour may not be imposed as a punishment for a crime. A convicted prisoner may not be required to work unless passed by a medical officer as physically fit.

Article 9

9. The common law rights of liberty of the person and freedom from arbitrary arrest exist and are jealously guarded. The remedy of habeas corpus is acutely observed and a person is detained only after being informed of the grounds of his arrest and must be brought before a court within 24 hours or bailed immediately. As the common law of England down to 1900 applies equally to the Colony the same rights of action available for damages for false imprisonment are available in the Colony under similar processes of law.

Article 10

10. The Prison Ordinance and Rules 1966 provide for the (one) local goal to be visited regularly by a panel of Visiting Justices. The Board is appointed annually by the Governor from the list of Justices of the Peace for the Colony, and inspects the prison buildings and quarters and receives complaints, if any, from any inmates there might be. The annual prison population is very small, only about two or three persons. The Visiting Justices also have power to deal with any breaches of discipline. Adequate safeguards exist in this small tightly-knit community to ensure that any prisoner is treated humanely. Because the local facilities are inadequate for handling any long term prisoners such would be sent to Britain.

11. Accused persons are detained only in cases of serious charges which are very rare. In such cases however accused persons would be segregated from any convicted persons who might be in custody and would receive appropriate separate treatment.

12. The prison is regularly visited when there are inmates by a medical officer and by the ministers of recognized religions thus to ensure that the physical and moral health of any prisoner is safeguarded. Juvenile offenders would be segregated from any adult offenders and be accorded treatment appropriate to their age and legal status.

Article 11

13. A person may be committed to prison for default in paying a debt only where the debt arose under a maintenance or judgement order imposed by a court of law.

Article 12

14. Persons lawfully within the Colony are free to choose their place of residence, and are free to leave the islands. There are no restrictions on liberty of movement within the Colony.

15. Individuals who are lawfully within the Falkland Islands do not by virtue of their lawful presence here have an automatic right of entry to the United Kingdom. Such a right is mainly confined to those who, under the Immigration Act 1971, have the right of abode in the United Kingdom by virtue of certain connexions.

16. Persons who do not have the right of abode in the Colony are subject to immigration control, this restriction is considered essential.

17. A reservation to Article 12.4 was made in respect of the Falkland Islands.

Article 13

18. A person who does not have the right of abode in the Colony may be deported only after an order declaring the person to be a prohibited immigrant has been made by the Governor in Council. The Immigration Ordinance and Regulations 1965 provide that the order may be carried into effect in such manner as the Governor in Council may direct. The person would be given a very full hearing.

Article 14

19. All persons are equal before the courts and tribunals. The minor distinctions made in English law in the procedural rights of litigants on grounds of their status e.g. infants, are made also in the Colony. Criminal and civil proceedings are conducted in open court. Certain parts of a trial may take place in closed court at the judges discretion, but the rules in this regard are exactly as those in England.

20. The judiciary is free and independent and impartiality of proceedings is safeguarded by rules of natural justice. There is trial by jury for serious criminal offences. Judges of the Supreme Court are appointed by Commission issued by HM The Queen which further safeguards the independence of the judiciary.

21. The principle of criminal law that an accused person is presumed innocent until proved guilty operates very firmly in the territory. The guilt of the accused must be proved beyond reasonable doubt; if there is any reasonable doubt as to the guilt of the accused he must be acquitted. There are a very few cases where the persuasive burden is on the accused, but the burden of proof on an accused person is never as high as that on the prosecution.

22. Summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. Every person arrested must be told the reason for his arrest.

23. A reservation to Article 14.3(d) was made in respect of the Falkland Islands.

24. An accused person is always given an adequate opportunity to prepare his defence, otherwise the conviction would be liable to be quashed on appeal. Because there are no practising lawyers in the Falkland Islands, paragraph 3(d) of the Covenant cannot be complied with; accused persons are, however, permitted to have persons of their own choosing to assist them in the preparation of their defence.

25. Defendants are tried in their own presence and are given the opportunity of defending themselves in person or by persons of their own choosing. Whenever a defendant appears unrepresented all his procedural rights are carefully explained to him by the presiding judge or magistrate.

26. The right to examine witnesses and to secure their attendance at court exists.

27. Where a person is ignorant of the English language the proceedings and evidence would be interpreted for him.

28. An accused person is in all cases entitled to make a plea of not guilty; he is a competent witness for the defence either on his own behalf or on the behalf of any person tried with him. The Criminal Evidence Act 1898 has been applied in the Colony.

29. With few exceptions charges against Juvenile persons are dealt with summarily by juvenile courts, the procedure in which always takes account of the age and circumstances of the juvenile. The rules relating to persons who may attend juvenile courts and limiting publication of details calculated to lead to the identification of the young person are the same as those in England.

30. Every person convicted may appeal from the Supreme Court to the Appeal Court for the Falkland Islands which sits in London, and onwards (with leave) to the Privy Council. Appeal lies against conviction and also against any sentence (unless fixed by law).

31. In the case of summary offences there is right of appeal from a court of summary jurisdiction and a magistrates court to the Supreme Court under the Magistrates Courts Acts 1952 as extended with modifications as to nomenclature to the Colony.

32. A convicted person who is later exonerated may bring a civil action for damages, but there is no provision for compensation from public funds.

33. The principle which has been reaffirmed in such statutes as the Unlawful Oaths Act 1797 (applicable to the Colony) that a person may not be tried for a crime in respect of which (i) he has previously been acquitted or convicted, or (ii) could on some previous indictment have been lawfully convicted, or which is substantially the same as one of which he was previously acquitted or convicted (or could on previous indictment have been convicted) is well established in the Colony.

Article 15

34. There are no cases where a general criminal statute has created a crime retrospectively. The principles embodied in this article have never been infringed.

Article 16

35. There are cases in which a person may be deprived of the protection of the law.

Article 17

36. A person's right to respect for his private and family life, his home and his correspondence is fully recognized in the Colony, although there is no general statutory right to privacy. Any unauthorized entry on land or buildings is a trespass which may be restrained by injunction and which will give rise to an action for damages. Rights of intervention are granted to public authorities only for purposes contemplated by this article.

Article 18

37. There is complete freedom of thought, conscience and religion, and of freedom to change religion or belief, limited only to the extent necessary to secure public safety, order, health or morals or rights of others. The safeguards written into such statutes as the Toleration Act 1688, the Places of Religion Worship Act 1812 the Liberty of Religious Worship Act 1855, the Places of Religious Worship Registration Act 1855, and the Offences Against the Person Act 1861, all of which extended to the Colony, form part of the Colony's basic law. Parents may have their children excused from attendance at religious worship and instruction in school.

Article 19

38. The common law of the Colony, being that of England, does not restrict the right to hold opinions nor inhibit freedom of expression except in certain defined spheres. The Official Secrets Acts are applicable in the Colony. There is no government censorship or control of the press or radio.

Article 20

39. A reservation to Article 20 was made in respect of the Falkland Islands.

40. The distribution of propaganda for war is not specifically prohibited. The law is, however, clear with regard to seditious offences which are actionable. The likelihood of a racial disturbance in this small monoethnic Colony is almost non-existent and there is felt to be no need in an harmonious community to introduce legislation against stirring up racial hatred.

Article 21

41. Freedom of peaceful assembly exists and there are no restrictions other than those prescribed by law in the interests of the community as a whole and for the protection of the rights and freedom of others.

Article 22

42. There are no legal objections to complete freedom of association other than those concerned with public safety, national security, and the prevention of crime.

43. There are no substantive or formal conditions that must be fulfilled upon the establishment of a trade union.

44. The International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise has been applied to the Falkland Islands.

Article 23

45. By law, the family unit is afforded the protection required by its position as the natural and fundamental group unit of society.

46. The Marriage Ordinance recognizes as valid every marriage which by the law of England would be valid and provides that no marriage shall be valid between parties who at the time of marriage would be incapable of inter-marrying by the law of England. Common law protects the right of each spouse during the subsistence of a marriage.

47. The Offences against the Person Act 1861 and the Sexual Offences Act 1956, which make it an offence to take away or detain or otherwise deprive parents of the possession of a child under the age of 14 years or unmarried girl under the age of 16 years, are both extended to the Colony.

48. A marriage may be terminated only by the death of one of the parties or by a decree of divorce pronounced by the Supreme Court of the Colony. Under the Matrimonial Causes Ordinance a divorce may be granted on the grounds of adultery, desertion, cruelty, or that the respondent is of an incurably sound mind. In cases where a decree absolute of divorce is given the court ensures that adequate arrangements are made for the welfare of any children of the marriage.

Article 24

49. The wide measure afforded to children by the law of England is also afforded to them in the Colony. The provisions of the Children and Young Persons Act 1933 have been extended to the Colony.

50. In a community as small as that of the Falkland Islands any case of neglect of a child or children, or of cruelty, rapidly becomes known to the authorities and appropriate steps to protect its or their welfare are quickly taken.

51. The Registration Ordinance provides that every birth in the Colony shall be registered by the father or mother within 14 days from the date of birth. If, for any reason, neither parent is able to register the birth the required particulars may be given to the register by a qualified informant who shall be either -

- (i) the occupier of the house in which the child was born;
- (ii) a person present at the birth; or
- (iii) a person having charge of the child.

52. The particulars required to be registered include the name and the surname by which at the registration of the birth it is intended that the child shall be known.

53. Failure properly to register a child within the specified period render the parent or qualified informant liable to a fine not exceeding £10.

54. A person born in the Falkland Islands acquires citizenship of the United Kingdom and Colonies by birth.

Article 25

55. The right to take part in the conduct of public affairs is primarily secured by elections to the Legislative Council, which through various committees is responsible for the internal government of the Colony including financial affairs. The Governor holds only certain reserve powers which would be exercised only in a state of emergency.

56. All British Subjects on the electoral roll who are over 21 years of age, and not in receipt of paid emoluments under the Crown are eligible for election. A person is entitled to vote and thus to appear on the electoral roll if he is a British Subject holding the necessary residential qualifications, i.e. was either

born in the Colony or if a non-Islander has resided here for a period of at least three years prior to the elections; is over 18 years of age; not mentally incapacitated nor subject to any legal incapacity. Elections are held at least once every four years. At such elections no person may vote more than once and voting is by secret ballot (Elections Ordinance).

57. Persons are appointed to situations in the local civil service by the Governor after selection by an Appointments Board. Any person may apply for such an appointment and the Board fairly and impartially considers his qualifications for the position before making the recommendations.

Article 26

58. In practice this Article is fully applied in the Colony and no person could be deprived of the equal protection of the law except by express legal process involving legislation.

Article 27

59. There is no ethnic, racial, or other difference in the population of the Colony. Complete freedom of religion is recognized and practised and there is no religious discrimination before the law.

ANNEX F

REPORT BY GIBRALTAR UNDER ARTICLE 40(1) (a)

PART I

1. The International Covenant on Civil and Political Rights does not itself have the force of law in Gibraltar. The obligation assumed under Article 2(2), which leaves each party free to decide the method by which it gives effect to the rights recognized in the Covenant, is fulfilled in Gibraltar by the provision of safeguards of different kinds operating independently of the Covenant but in full conformity with it.

2. Chapter I of the Constitution of Gibraltar (hereinafter referred to as the Constitution) contains provisions for the Protection of Fundamental Rights and Freedoms of the Individual, and section 15 of the Constitution provides for the enforcement of those protective provisions of the Constitution. However, the legal rules concerning human rights and freedoms are not embodied only in those provisions, but derive also from legislation in many fields, and from case law.

3. The explanations provided in the present report are mainly confined to the legal system of Gibraltar which is modelled on that of England and Wales. The legal rules of that system fall into two main categories - rules prescribed by legislation and rules to be deduced from the decisions of courts of authority. Those of the latter category are themselves derived from two sources - first, the common law proper (that is, the laws and customs which have received judicial recognition from early times) and, secondly, the interpretation of legislation.

PART II

Articles 2 and 3

4. The measures which, in Gibraltar, give effect to the rights recognized in the Covenant, are described in this Report in relation to each Article. They do not discriminate between individuals on any such basis as is mentioned in Article 2 and, as is described in relation to other Articles, certain specific measures have been taken to secure the equal and effective protection of all persons against such discrimination. However, members of the armed forces and persons detained in penal establishments are governed by special rules for the preservation of service and custodial discipline.

5. The Constitution confers a specific right of action in respect of violation of any basic rights or freedoms as such. The principal remedies and sanctions are described in this Report in relation to each Article of the Covenant. The fact that a defendant was acting in an official capacity affords no defence, and proceedings can be brought against public authorities (including, in general, the Crown) as they can against private individuals. Proceedings against the Crown are regulated by the Crown Proceedings Ordinance (Chapter 38 of the Laws of Gibraltar). There are no restrictions on a person's right of recourse to the courts and legal aid is generally available for those who cannot afford to pay for legal assistance.

Article 5

Paragraph 1

6. Gibraltar has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant. The sections of this Report dealing with the rights and freedoms concerned describe the limitations which have been placed on their exercise.

Paragraph 2

7. The safeguards which, in Gibraltar, give effect to the rights recognized in the Covenant exist independently of the Covenant which does not itself have the force of law. The absence of any rights from the Covenant or their restriction thereunder could not therefore be used as a pretext for derogating from any of the other fundamental human rights enjoyed by persons in Gibraltar.

Article 6

Paragraph 1

8. The right to life recognized in this paragraph is protected both by the criminal law and by the civil law. The taking of a person's life, save in certain exceptional conditions, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to murder, manslaughter or infanticide, according to the circumstances. The exceptional conditions include cases where the taking of life occurred:

- (1) in pursuance of a sentence of a court;
- (2) in exercise of the right of self-defence (provided that no more force is used than is reasonable in the circumstances);
- (3) in the prevention of crime, provided, again, that no more than reasonable force is used.

9. If death is caused by a negligent act or by an intentional and unjustified act, it is a wrong against the deceased, and his personal representatives can, by virtue of the Contract and Torts Ordinance (Chapter 32) bring an action in tort (i.e. civil wrong) against the person whose act caused the death or against the latter's employer if the act was carried out in the course of that person's employment. If the deceased would have had an action against any person in respect of the act which caused the death (if death had not ensued) any dependants of the deceased have a right of action for any pecuniary loss they have suffered by virtue of the same Ordinance.

10. The above-mentioned provisions of the criminal law (and probably also those of the civil law) do not apply in relation to unborn children. However, an attempt to procure an abortion will generally constitute an offence under section 56 of the Criminal Offences Ordinance (Chapter 37) punishable with life imprisonment.

Paragraph 2

11. Since 1965 judgment of death can be passed only for treason and for crimes of piracy in which violence is committed (there have been no such judgments in recent times). The penalty can only be carried out pursuant to a final judgment given by a competent court.

Paragraph 3

12. Under the Genocide Ordinance (Chapter 184) genocide is an offence punishable with imprisonment for life if the offence consists of the killing of any person, or, if not, with imprisonment of not more than 14 years.

Paragraph 4

13. In those exceptional cases where a person may be sentenced to death he has the right to petition the Crown for a pardon or for the commutation of his sentence. A pardon or commutation of sentence may be granted in all cases in the exercise of the Royal Prerogative of Mercy.

Paragraph 5

14. In those cases (treason, piracy) where the death penalty has not been abolished, judgment of death cannot be passed upon any person who, at the time of the offence, was under the age of 18: (section 122 of the Criminal Justice Administration Ordinance, Chapter 36) nor may it be passed upon an expectant mother (section 56 of the same Ordinance).

Article 7

15. The right not to be subjected to torture or to other forms of ill-treatment or punishment is protected both by the criminal law and by the civil law. Any use of force against a person, save in exceptional circumstances, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to assault or battery. The exceptional circumstances include cases where the use of force occurs:

(1) in self-defence or the defence of property, provided that no more force is used than is necessary for the purpose;

(2) in the prevention of crime or in the lawful arrest or detention of an individual, provided that no more force is used than is reasonable in the circumstances;

(3) in the course of the lawful correction of a child by its parents or of a pupil by its teacher, provided that the correction is reasonable and moderate considering the age, health and sex of the child.

16. A person who has been ill-treated may bring an action in tort for damages against the person or persons who, it is alleged, were responsible for the assault. If the assault was committed by a person in the course of his employment the action would lie both against that person and against his employer. And in a case where it was not possible to identify which of several employees was responsible for an assault, an action for damages could still be maintained against their employer.

17. Apart from these general provisions further rules have been adopted to ensure the protection of the individual in particular circumstances. For example, in addition to their liability to prosecution for any criminal offences they commit, police officers are liable to be dealt with in internal disciplinary proceedings of any infringement of the police discipline code. Under this code (set out in the Police Regulations made under the Police Ordinance Chapter 126) it is an offence among other things, for a police officer to use any unnecessary violence towards a prisoner or other person with whom he may be brought in contact, in the execution of his duty. Where a police officer is charged with a breach of the code, the case is heard by a disciplinary tribunal. If the officer is found guilty, the punishments which may be imposed range from a reprimand or a fine to dismissal from the Force. A right of appeal against any findings of guilt and against punishment lies to the Governor or to the Commissioner if he was not a member of the disciplinary tribunal.

18. A criminal or disciplinary offence committed by a police officer against a private person may come to light through a complaint made by that person or someone acting on his behalf. Any complaint made by a member of the public against an officer of the Force is investigated either by a senior officer of the Force or by a law officer.

19. It is an absolute rule that a confession which is found by the judge to have been obtained by oppression is inadmissible as evidence against the person who made the confession. In a jury trial this question is decided by the judge after hearing evidence and argument in the absence of the jury and, if the judge rules that the confession is inadmissible, no reference to the confession may be made when the trial proper recommences.

20. Prison officers, like police officers, are subject to a code of discipline in addition to their normal liability under the criminal and civil law: see the section of this Report dealing with Article 10 of the Covenant.

Article 8

21. There is no slavery or servitude, nor any forced or compulsory labour as described in this Article. Labour is given freely under contract and it is customary for service contracts to be terminable by either party on due notice; in cases of breach of contract the courts will not generally order specific performance. Any contract smacking of servile obligations is illegal as contrary to public policy.

22. The right of action for false imprisonment ensures the protection of the subject from wrongful detention or confinement, whether for the purpose of exacting labour or for any other purposes. False imprisonment is also a criminal offence at common law. Any unlawful threat or use of physical violence for the exaction of labour or any other purpose gives the sufferer a right either to prosecute the offender or to bring a civil action against him. The common law right to the writ of habeas corpus is available in all cases of unlawful detention, whether in prison or in private custody. By this writ the Supreme Court may command that the person detained be brought before the Court, so that the causes of his detention may be enquired into. If the detention is shown to be unlawful, his release will be ordered.

23. Under the United Kingdom's Slave Trade Act 1824, which applies in Gibraltar all operations in connexion with the slave trade are illegal. Dealing and trading in slaves, and associated acts, are offences punishable by imprisonment for a term not exceeding 14 years.

24. Imprisonment with hard labour may not be imposed as a punishment for a crime. A convicted prisoner may, unless excused by the medical officer, be required to do useful work and may be paid for his work at rates approved by the Governor.

Article 9

Paragraph 1

25. Among the most important common law rights are liberty of the person and freedom from arbitrary arrest. These rights are established under the Constitution. Any person who arrests or detains another without lawful cause will be liable not only to a civil action in damages for false imprisonment but also to criminal prosecution for a criminal offence. Every restraint of the liberty of one person under the custody of another, either in a prison, house or in the street, is treated as an imprisonment.

Paragraph 2

26. In general, an arrested person must be informed of the true ground of his arrest. If this is not done the person who effected the arrest, whether a policeman or a private person, may be liable for false imprisonment. This requirement turns on the basic proposition that a person is, prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reasons why it is claimed that restraint should be imposed. All summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. Police officers have been advised by the Attorney-General that the accused should be given a written notice containing particulars of the charge in simple language as soon as a firm decision to bring a charge has been reached.

Paragraph 3

27. As a general rule a person taken into custody without a warrant must be brought before a court as soon as practicable: if the offence is not serious, and it will not be practicable to bring him before a court within 24 hours, he must be bailed immediately. Whether the apprehension is with or without a warrant there must be no unnecessary or unreasonable delay in taking the person before a court.

28. A person awaiting trial will generally be released on bail unless there are exceptional circumstances; in particular, that the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would:

- (a) fail to surrender to custody, or
- (b) commit an offence while on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

The defendant may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody at the time and place appointed. He may also be required by a court to comply with any other requirements that appear to the court to be necessary for this purpose. Where it appears that he is unlikely to remain in the country, he may be required to give security.

Paragraph 4

29. The remedy of habeas corpus, which puts an end to illegal confinement, defends the right of personal freedom. The writ of habeas corpus may be obtained by any person detained against his will, not by a lawful sentence or order of a court, on probable cause being shown in an affidavit. It may also be obtained by any person acting on behalf of the person detained. Unless the detention is shown to be lawful, the person detained will at once be set free; discharge under the writ is final and cannot be questioned.

Paragraph 5

30. There is a right of action at common law for damages for false imprisonment where a person has been arrested or otherwise detained in circumstances in which the detention was not expressly or implicitly authorized by law. A person may also obtain damages against anyone who procures his arrest or imprisonment by means of criminal proceedings which are instituted maliciously and without reasonable cause. Reasonable cause has been described as:

"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

31. In each of the above cases, the claim for damages is enforceable by normal process of law by action in the civil courts against the person responsible for, or for procuring, the arrest or detention.

Article 10

Paragraph 1

32. The regulation and management of all penal establishments (there is in practice only one such establishment) are governed by statutory rules made by the Governor. In what they prescribe both for the conduct and responsibilities of staff at establishments and for the supervision and care of prisoners, the rules take account of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

33. So far as adults are concerned, the Prison Ordinance (Chapter 129) and the Prison Regulations comply as far as is practicable and make explicit provision for the physical welfare of prisoners and for the care of their physical and mental health. Apart from those provisions which are directly aimed at preventing any ill-treatment of prisoners (see below), there are others which carry the same implication.

34. All penal establishments are subject to the direction of the Governor of Gibraltar who is answerable to the Secretary of State for their proper administration. Any magistrate has a statutory right to visit a prison to which his court commits prisoners. In addition, there is a Board of Visitors which is appointed by the Governor.

35. The work of members of Boards of Visitors is voluntary and unpaid and covers three main formal functions:

(a) they constitute an independent body of representatives of the local community to which any inmate may make a complaint or request, both at their regular monthly meetings and during the visits which individual members make between meetings;

(b) their members regularly visit and inspect all parts of the establishment, paying particular reference to the state of premises, the quality of the administration as it affects inmates, and the treatment - in its widest sense - which inmates receive, with a view to reporting and making recommendations to the Governor.

(c) as the superior disciplinary authority of the establishment, they adjudicate when inmates are charged with any of the relatively serious offences against discipline.

36. To enable them to carry out their tasks the Prison Ordinance gives members of the Board the right to enter all parts of the establishment at any time, to examine its records and to talk to any inmate out of sight and hearing of the Superintendent and other members of the staff.

37. The Board reports direct to the Governor, both by formal annual reports and also as occasions may require, on every aspect of the administration of the Prison; and they are obliged to enquire into and report on any matter which he may refer to them.

38. The Prison Rules also contain specific provisions concerning particular aspects of prison treatment. For example, a prisoner may not be removed from association with other prisoners for the maintenance of good order and discipline or in his own interests for more than three days by the Superintendent or by the Board for more than fourteen days except in cases of mutiny or gross personal violence to a prison officer when removal may be for up to twenty-eight days.

39. If the Superintendent orders that a prisoner be put under restraint to prevent him injuring himself or others, he is required to give notice of this as soon as possible to the Board and to the medical officer (Regulation 74). Particulars of every restraint must be recorded.

40. The circumstances in which prisoners may be punished for offences against discipline are prescribed in detail in the Regulations as are the offences themselves. The regulations require that no prisoner shall be punished unless he has had an opportunity of hearing the charge and evidence and making his defence. All adjudication must be conducted by the Superintendent or, in more serious cases, by the Board. The punishments which may be awarded are prescribed in the regulations. (They are: caution, forfeiture of privileges, exclusion from associated work, stoppage of earnings, cellular confinement, bread and water diet, and forfeiture of remission of sentence. In addition unconvicted prisoners may lose certain of their special privileges.) The maximum periods for which these punishments may be awarded are prescribed by the Regulations.

41. The use of force in dealing with inmates is governed by Regulation 6. With regard to the treatment of inmates, a prison officer commits an offence if he is guilty of using any force except in lawful self-defence or in trying to prevent an escape or if he acts in a manner calculated to provoke a prisoner.

42. Prison officers are of course liable to prosecution for any criminal offences, including assaults, committed whilst on duty, and it is usual to refer a case to the police for investigation where an inmate has clearly suffered bodily harm. Similarly, unless investigation shows that an allegation is clearly groundless, any case involving an allegation of indecent assault is referred to the police for inquiry.

43. It is also possible for inmates or ex-inmates to take out private summonses against staff for assault, although this is rare, and under certain conditions to institute civil actions against staff.

Paragraph 2(a)

44. Section 20 of the Prison Ordinance requires that unconvicted prisoners shall be kept out of contact with convicted prisoners as far as this can reasonably be done. An unconvicted prisoner may have at his own cost such books, newspapers, writing materials or other means of occupation as are not considered objectionable. He may have food and drink sent in from outside the prison and may wear his own clothing and have changes of it sent in. Work is optional, and if an unconvicted prisoner elects to work he receives payment for it. Prisoners under the age of 17 are, so far as the facilities available will allow, generally kept apart from others.

Paragraph 3

45. A person under 14 years of age may not be sentenced to imprisonment. A person between the ages of eight and eighteen who has been convicted of murder must be sentenced to detention at Her Majesty's pleasure.

46. The above provisions concerning custodial sentences for juvenile offenders result in only a restricted number of young offenders being admitted to adult prison establishments. Those who are admitted are generally segregated from adults. However, there are cases when lack of suitable accommodation makes this impracticable. Moreover, in certain cases complete segregation is not considered necessarily desirable. Older women, who are less likely to be committed to a criminal way of life than adult males, can have a stabilizing influence in the case of girls over school-leaving age.

Article 11

47. Domestic law does not permit the imprisonment of any person on the ground of his failure to fulfill a contractual obligation.

Article 12

Paragraph 1

48. Domestic law does not generally permit any interference with the right of a person lawfully within Gibraltar to liberty of movement and freedom to choose his residence within Gibraltar. Any unlawful interference with that right by a public authority would, insofar as it amounted to an imprisonment, be restrained

by application for a writ of habeas corpus or proceedings for false imprisonment (see the section of this Report dealing with Article 9). Otherwise proceedings for certiorari may lie to quash the act or order complained of. As regards the powers of exclusion, see the comments under Article 4.

Paragraph 2

49. Domestic law does not generally permit any interference with the right of a person to leave Gibraltar. Any unlawful interference with that right could be restrained by application for a writ of habeas corpus or proceedings for false imprisonment or certiorari as appropriate.

Paragraph 3

50. Restrictions on the rights in paragraphs 1 and 2 of this Article occur mainly in cases of arrest and detention which are dealt with in relation to Article 9 of the Covenant.

Paragraph 4

51. The Immigration Control Ordinance (Chapter 74) provides that no Gibraltarian needs to hold any permit or certificate required under the Ordinance. In consequence all Gibraltarians have a right to enter and reside in Gibraltar. Persons who do not have a right of entry or residence are subject to immigration control.

Article 13

52. Subject to certain exceptions, any person who does not have the right of abode but who is lawfully in Gibraltar may be deported under the Immigration Control Ordinance (Chapter 74) if a court has recommended deportation after convicting him of an offence or if, having only a limited leave to enter and remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave or if the Principal Immigration Officer deems his deportation conducive to the public good. There is also power to deport the wife and children under 18 of someone against whom a deportation order has been made.

53. Where a court has recommended deportation, there is an appeal to the Governor against the recommendation. In all cases the person proposed to be deported is informed, so far as is possible, of the nature of the allegations against him and is given the opportunity to appeal to the Governor who decides whether the deportation should proceed.

Article 14

Paragraph 1

54. Domestic courts and tribunals are open to all persons on an equal basis. Only certain minor distinctions in the procedural rights of litigants are made on grounds of their status. For example, an infant may only carry on proceedings by his guardian or some other person, who is called his next friend (Rules of the Supreme Court, Order 80, Rule 3(2)) (- these are rules in force in England which apply in Gibraltar).

55. All criminal proceedings are conducted in public, with the exception of cases involving public security (Official Secrets Act 1920, s.8(4) - this Act applies in Gibraltar) cases heard in the juvenile courts from which the public, but not the press, are excluded (Criminal Justice Administration Ordinance Cap 36 s.115), and cases in which, on the ground of public decency, the judge has a discretion to close the court while evidence of a particularly intimate character is being given by a child or young person. In the trial of charges under the Official Secrets Acts 1911 - 1939, the court is only closed (if at all) during the hearing of such parts of the trial as the judge, in his discretion, deems desirable and the sentence must always be passed in public. Civil proceedings must also be conducted in open court, except in certain cases where press and public may be excluded on grounds of a kind contemplated in paragraph (1) of this Article and on the grounds of decency set out earlier in this paragraph.

56. Impartiality of all judicial proceedings is safeguarded by the rule of natural justice that no man may be judge in his own cause (nemo iudex in causa sua) and by the independence of the judiciary, which is free to administer the law under the protection of the law without fear or favour. If, for any reason, a real likelihood of bias can be established, the judgment is voidable. No inquiry is made whether any bias has in fact been shown; it is sufficient to prove that the judge had an interest in the proceedings. Trial by jury for serious criminal offences provides a further general safeguard against prejudice in the administration of the law.

Paragraph 2

57. It is a fundamental principle of the criminal law that an accused person is presumed innocent until proved guilty. The guilt of the accused must be proved beyond reasonable doubt, and the accused must be acquitted if there is any reasonable doubt as to his guilt. In general, the burden of proof is on the prosecution, and never shifts. In a very few cases, however, the persuasive burden is on the accused. It is for the accused to prove the defences of insanity and diminished responsibility; and in some cases statutes have placed the burden of proving certain facts or excuses on the defence. When the burden of proof is on the accused, it is sufficient for him to prove the exculpatory fact on a balance of probabilities. The burden of proof on the accused is thus never as high as that on the prosecution.

Paragraph 3(a)

58. Summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. A person arrested without warrant must be told the reason for his arrest; and a written copy of the charge against him is always given to him. Where trial is on indictment, the accused is also entitled to a copy of the information and to a copy of the indictment (a formal written accusation of the charge).

Paragraph 3(b)

59. The accused must, as a matter of natural justice, be given an adequate opportunity to prepare his defence. If the trial is due to take place before he has had such an opportunity he may apply to the Court for an adjournment. If the application is genuine, it must be granted; if it is not granted, the

conviction is liable to be quashed on appeal. As regards facilities, in any trial on indictment it is the duty of the prosecution to inform the defence of the identity of their witnesses and of the nature of their evidence. In the preparation of his defence, the accused has the right to instruct a solicitor and counsel of his own choice.

Paragraph 3(c)

60. Where an accused person is committed for trial such committal must be to the next session of the Supreme Court unless such session is due to commence less than ten days from the date of committal - in such a case committal is to the next session but one.

Paragraph 3(d)

61. In general a defendant has a right to be present at his trial, but the proceedings may in exceptional circumstances be continued in his absence if he voluntarily refrains from attending or if by his conduct he makes their orderly continuation impossible.

62. The right of an accused person to defend himself in person or to be represented by solicitor and counsel of his own choice is an accepted principle. It is the duty of the judge or magistrate to inform a defendant who appears unrepresented of his procedural rights and particularly of his rights to cross-examine witnesses for the prosecution and, at the close of the prosecution case, to give sworn evidence on his own behalf or to make an unsworn statement, to call witnesses and to address the court.

63. Legal aid in criminal proceedings is governed by the Legal Aid and Assistance Ordinance (Chapter 86) and normally consists of representation by counsel, including advice on preparing the case. The power to grant legal aid is exercisable where it appears to the court desirable to do so in the interests of justice and the court must make an order in certain cases, e.g. where a person is committed for trial and has not sufficient means to enable him to acquire such aid. An order must not be made unless it appears to the court that the means of the persons concerned are such that he requires assistance in meeting the costs which he may incur.

Paragraph 3(e)

64. The accused person, or his counsel if he is represented, has the right to question the witnesses of the prosecution and to call witnesses on his own account. The defence may secure the attendance of a person as a witness on behalf of the accused by the issue of a subpoena, which compels the person on whom it is served to attend a court.

Paragraph 3(f)

65. Where a prisoner who is ignorant of the English language is being tried and is undefended, the evidence must be interpreted for him. If he is defended, the evidence should be interpreted except when he, or his counsel on his behalf, expresses a wish to dispense with the interpretation, and the judge thinks fit to permit the omission; but the judge should not permit it unless he is of the opinion that the accused substantially understands the evidence to be given against him.

Paragraph 3(g)

66. An accused person is in all cases entitled to make a plea of not guilty. When a person is arraigned on an indictment:

(a) he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea;

(b) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;

(c) if he stands mute of malice or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on his behalf, and he shall then be treated as having pleaded not guilty.

67. A defendant is a competent witness for the defence at every stage of criminal proceedings either on his own behalf or on behalf of any person who is tried with him. But he cannot be called as a witness except upon his own application, and his failure to give evidence must not be made the subject of any comment by the prosecution (Criminal Justice Administration Ordinance: section 32).

Paragraph 4

68. A magistrates' court before which a person between the ages of 14 and 17 is charged with an indictable offence, other than homicide, may, if it considers it appropriate and the accused consents, deal with the matter summarily. Such a court before which a person under the age of 14 is charged with an offence, other than homicide, shall deal with the matter summarily unless the person is charged jointly with a person who has attained the age of 14 and the court considers it necessary in the interests of justice to commit them both for trial.

69. Subject to minor exceptions a magistrates' court trying a case summarily against a person under the age of 17 must sit as a juvenile court. A juvenile court must not sit in a room in which sittings of a court other than a juvenile court are held if a sitting of that other court has been or will be held there within an hour before or after the sitting of the juvenile court. The only persons who are permitted to be present in court are:

- (1) members and officers of the court;
- (2) parties in the case, their counsel and witnesses and other persons directly concerned in that case;
- (3) newspaper reporters;
- (4) other persons specifically authorized by the court to be present.

No newspaper report of any proceedings in a juvenile court may reveal the name, address or school or include any particulars calculated to lead to the identification of any person under 17 who is accused or is a witness, and no picture of any such person may be published in a newspaper except by direction of the court. The parent or guardian of the accused may be required to attend the court at all stages of the proceedings and must attend at any stage where the court thinks it desirable, unless the court is satisfied that it would be unreasonable to require his attendance.

Paragraph 5

70. Any person convicted of an offence on indictment may appeal from the Supreme Court to the Gibraltar Court of Appeal against his conviction (Gibraltar Court of Appeal Ordinance: Chapter 70). Appeal also lies against any sentence passed for an offence, unless fixed by law.

71. If an appeal against conviction is based upon any ground which involves a question of law alone, or the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact or a question of mixed law and fact, the appeal lies without leave; in any other case, the leave of the Court of Appeal is required.

72. In the case of summary offences, there is a right of appeal from a magistrates' court to the Supreme Court:

(a) against sentence when the accused pleaded guilty;

and

(b) against conviction or sentence when the accused did not plead guilty.

73. An appeal on points of law and jurisdiction lies by way of case stated to the Supreme Court from a magistrates' court and from the Supreme Court, when that court has determined an appeal from a magistrates' court, to the Court of Appeal.

Paragraph 6

74. There are no provisions conferring a right on a person convicted of a criminal offence but later exonerated to receive compensation from public funds for any loss or hardship he may have suffered.

75. However, a person may have a right to bring a civil action for damages against the person or authority responsible if criminal proceedings have been instituted maliciously and without reasonable cause. In the case of such a civil action damages are assessed and payment may be enforced by the courts according to the normal rules applicable in such cases.

Paragraph 7

76. It is a long established principle of common law, which has been reaffirmed in several statutes (e.g. Unlawful Oaths Act 1797) that a person may not be tried for a crime: (i) in respect of which he has previously been acquitted or convicted; (ii) in respect of which he could on some previous indictment have been lawfully convicted; (iii) if the crime is in effect the same or substantially the same one in respect of which (a) he has previously been acquitted or convicted, or (b) he could on some previous indictment have been convicted.

Article 15

77. The Legislature of Gibraltar is competent to enact ex post facto criminal legislation if it regards this as necessary, but there is a powerful presumption against its doing so, and there is almost certainly no case where a general criminal statute has created a crime retrospectively. It is also a fundamental rule that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Ordinance or arises by necessary and distinct implication.

Article 16

78. There are no cases in which a person may be deprived of the protection of the law. Outlawry proceedings, which had long been obsolete, were finally abolished by the Administration of Justice (Miscellaneous Provisions)

Act 1938, s.12. As regards the position of unborn children, see the section of this Report concerning Article 6.

Article 17

79. Any power a public authority may have to interfere with a person's right to respect for his private and family life, his home and his correspondence must be provided by law. No public authority has any right to interfere with these rights other than those provided by law. Although there is no general statutory right to privacy, particular intrusions may be the subject of actions in the courts. For example, any unauthorized entry on land or buildings is a trespass which may be restrained by injunction and which will give rise to an action for damages.

80. Rights of intervention are only granted to public authorities for purposes contemplated by Article 17. The empowering provisions are found in various Ordinances. Some examples of powers of entry are the following - the City Fire Brigade and Fire Services Ordinance 1976; s.19, and the Trade Licensing Ordinance 1972; s.19. As regards correspondence, private rights are protected by ss.32, 33, 34 and 35 of the Post Office Ordinance (Chapter 128).

81. Control of prisoners' correspondence is provided by regulation 28 of the Prison Regulations: this regulation is, however, not applicable to correspondence with a legal adviser.

Article 18

82. There are no restrictions imposed by law on freedom of thought, conscience and religion or belief.

83. Freedom to manifest one's religion or beliefs is restricted by law only to the extent that this is necessary to secure public safety, order, health or morals or the rights of others.

84. Interference with any of these freedoms will normally constitute a civil or criminal wrong under the common law, but in addition a statutory offence is committed by anyone who disturbs a religious meeting or obstructs a clergyman or other minister in order to prevent him from officiating at a religious service (e.g. Criminal Offences Ordinance, s.247).

85. Although religious worship and instruction is an essential feature of the curriculum of Government and voluntary schools, parents may insist on their children being excused from attendance at religious worship and instruction (Education Ordinance 1974, s.42(4)).

Article 19

86. The common law knows of no restrictions on the right to hold opinions; and it does not inhibit freedom of expression save in respect of statements which are in contempt of court, blasphemous, seditious, defamatory of another person, in breach of confidence or likely to provoke a breach of the peace. Any

restrictions on freedom of expression and the freedom to receive and impart information other than these can result only from legal provisions enacted by or approved by the Legislature in the public interest. Examples of such statutory and other provisions are as follows:-

(a) the Official Secrets Acts 1911-1939 (which are concerned with the protection of Government information in the interests of national security, etc.);

(b) certain provisions of the Criminal Offences Ordinance (Chapter 37) which are concerned with the prevention of disorder and incitement to racial hatred and with obscene publications.

There is no government censorship or control of the press. As to control of prisoners' correspondence, see the section of this Report dealing with Article 17.

Article 20

87. Although criminal law does not in terms prohibit the distribution of propaganda for war, if the propaganda, or its manner of presentation, was such as to bring the sovereign or government into hatred or contempt or generally to create disorder, discontent or dissatisfaction, it may amount to sedition, at least if there is an intention to provoke a breach of the peace. Or if the propaganda were intended or tended to cause a breach of the peace, and the language used was threatening, abusive or insulting, a prosecution may lie under the Criminal Offences Ordinance (Chapter 37).

88. While, again, criminal law does not prohibit the advocacy of national, racial or religious hatred in the terms provided by paragraph 2 of this Article, advocacy of hatred may, in certain circumstances, give rise to the offence of sedition and to an offence under the Criminal Offences Ordinance (Chapter 37).

Article 21

89. Freedom of peaceful assembly is one of the oldest common law rights and there are no restrictions on the exercise of this right other than those prescribed by law in the interests of the community as a whole and for the protection of the rights and freedoms of others. Common law, for example, forbids assemblies convened with the express object of effecting a breach of the peace and the Criminal Offences Ordinance (Chapter 37) makes provision for the regulation of processions along the highway.

Article 22

90. There are no legal objections to complete freedom of association other than those concerned with public safety, national security, and the prevention of crime. It is unlawful, for example, to organize an association for the purpose of usurping the function of the police or of the armed forces of the Crown, or for the use or display of physical force in promoting any political object (Criminal Offences Ordinance Chapter 37 s.217).

91. As regards trade unions, that the usual objects of a trade union are lawful can be seen from the Trade Unions and Trade Disputes (Conciliation and Arbitration) Ordinance (Chapter 153). There are no substantive or formal conditions that must be fulfilled upon the establishment of a trade union.

92. The United Kingdom is a party to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize and the Convention extends to Gibraltar.

Article 23

Paragraph 1

93. Domestic law accords to the family the protection required by its position as the natural and fundamental group unit of society.

94. The Marriage Ordinance (Chapter 99) lays down the formalities required for the solemnization of marriages. These formalities are designed to ensure, inter alia, that so far as is practicable a marriage entered into under its provisions may not subsequently be impugned. A breach of these provisions may attract criminal sanctions.

95. During the subsistence of a marriage the rights of each spouse vis-à-vis third parties are protected, inter alia, by the common law action for loss of consortium if this was due to the defendant's breach of contract or tort. (The common law actions for enticement and harbouring, and the right to claim damages for adultery were abolished by the Contract and Tort (Amendment) Ordinance 1972. Under the same Ordinance damages arising from death caused by the defendant's wrongful act may be recovered by the deceased's wife, husband, parent, grandparent, child, grandchild, sister, uncle, aunt and the issue of a brother, sister, uncle or aunt. Under section 55 of the Criminal Offences Ordinance it is an offence to take away or detain any child under the age of 14 years with intent to deprive its parent of its possession or to harbour a child knowing it to have been obtained in this way. Section 82 of the same Ordinance makes it an offence for a person acting without lawful authority or excuse to take an unmarried girl under the age of 16 out of the possession of her parent against her parent's will.

96. A marriage may be terminated only by the death of one of the parties or by a decree of dissolution, divorce or nullity pronounced by a court of competent jurisdiction. Under the Matrimonial Causes Ordinance (Chapter 101) a divorce may be granted on the application of either spouse on the ground of adultery or on the application of the wife that the husband has been guilty of rape, sodomy or bestiality.

Paragraph 2

97. The right to marry derives from common law and the only general statutory restrictions on this right are those contained in the Marriage Ordinance (Chapter 99). In order that a person domiciled in Gibraltar should have capacity to contract a valid marriage, the following conditions must be satisfied:

- (a) one party must be male and the other female;
 - (b) neither party must be already married;
 - (c) the male must be over the age of 16 and the female over the age of 14;
- and

(d) the parties must not be related within the prohibited degrees of consanguinity or affinity.

Paragraph 3

98. It is necessary for a valid marriage that the parties should consent to marry one another. If, therefore, there is a mistake as to the person with whom the marriage ceremony is performed or as to the nature of the ceremony itself, the marriage is void. However, when a person of full age and mental capacity goes through a ceremony of marriage there is a presumption of consent which can only be rebutted by clear evidence.

99. Fraudulent misrepresentation or concealment does not affect the validity of a marriage to which the parties freely consented with a knowledge of the nature of the contract. But if a person is induced to go through a ceremony of marriage by threats or duress, or in a state of intoxication and without any real consent to the marriage, it is invalid. In all such cases the test of validity is whether there was any real consent to the marriage.

Paragraph 4

100. A number of steps have been taken in recent years to ensure equality of the rights and responsibilities of spouses. For example:

(a) the Matrimonial Proceedings Ordinance (Chapter 96) increased the powers of a magistrates' court to make matrimonial orders during the subsistence of a marriage including, in particular, orders concerning the custody and maintenance of children of the family. A child of the family is defined for this purpose as a child of both spouses or a child of one of them who has been accepted as a member of the family by the other, and in either case the child may be legitimate, illegitimate or adopted.

(b) the Domicile Matrimonial Proceedings Recognition of Divorces and Legal Separations Ordinance 1974, abolished the common law rule that a woman acquired the domicile of her husband on marriage. In future a married woman's domicile is to be ascertained independently of her husband's.

As regards the protection of children, see the section of this Report dealing with paragraph 1 of this Article.

Article 24

Paragraph 1

101. By reason of their status as minors, children enjoy a wide measure of protection by domestic law (without discrimination on any basis). Perhaps the most important provision in this respect is to be found in section 33 of the Criminal Offences Ordinance (Chapter 37) under which:

"If any person who has attained the age of sixteen years and has the custody, charge or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of (an offence)"

102. A parent or other person legally liable to maintain a child or young person is deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him or taken appropriate steps to procure it.

103. The Employment of Women, Young Persons and Children Ordinance (Chapter 50) contains provisions concerning particular aspects of children's welfare e.g. by imposing restrictions on their employment.

104. Primary responsibility for the care and upbringing of a child is placed on its parents. It is, for example, the duty of the parent of every child between the ages of 5 and 16 to ensure that he receives "efficient full-time education suitable to his age, ability and aptitude either by regular attendance at school or otherwise" (Education Ordinance 1974). Parents who fail to perform this duty are liable to be prosecuted.

105. In disputes between the parents, either may apply for a court order for custody of or access to their child under the Infants Ordinance (Chapter 78). Section 5 of the Ordinance provides that the court must in any such proceedings regard the welfare of the child as the paramount consideration. As to provision on divorce, see the section of this Report dealing with Article 23.1.

Paragraph 2

106. Section 10 of the Births and Deaths Registration Ordinance (Chapter 12) provides that in the case of every birth it is the duty:

- (a) of the father and mother of the child; and
- (b) in the case of the death or inability of the father and mother, of each other qualified informant, to give to the registrar, before the expiration of a period of 21 days from the date of the birth, information of the particulars required to be registered concerning the birth.

"Qualified informant" includes -

- (i) the occupier of the home in which the child was to the knowledge of that occupier born;
- (ii) any person present at the birth;
- (iii) any person having charge of the child.

The particulars required to be registered include the name and the surname by which at the registration of the birth it is intended that the child shall be known.

107. Failure by a parent to give information concerning the birth of his child, and wilful refusal by any qualified informant to answer any question put to him by the registrar relating to the particulars required to be registered constitute criminal offences.

Paragraph 3

108. Citizenship is governed by the British Nationality Act 1948, s.4.

Article 25

109. The right to take part in the conduct of public affairs is primarily secured by the elections of representatives to the House of Assembly. Subject to certain exceptions, all persons are eligible for election to membership of the House of Assembly. The persons who are excluded are aliens, persons under the age of 18, the mentally ill, bankrupts, and the holders of specified offices (including most major judicial offices), those employed in the civil service of the Crown and members of the regular armed forces of the Crown (Constitution of Gibraltar, section 28). A person who has been found guilty of a corrupt or illegal practice at a previous election may be excluded for a period of 5 or 7 years depending on the circumstances. The persons entitled to vote as electors at a parliamentary election are those persons of 18 years or over who are resident in Gibraltar or in a neighbouring consular district, are not subject to any legal incapacity to vote and are either British subjects or citizens of the Republic of Ireland (Elections Ordinance, Chapter 48). Persons subject to a legal incapacity include persons suffering from severe mental illness and convicted persons detained in a penal institution. A person found guilty of a corrupt or illegal practice at a previous election may also be disqualified from voting for a period of five years.

110. The effect of the Constitution of Gibraltar is that a general election must be held at least once every four years. At such general election, no person may vote more than once (Elections Ordinance Cap 48). Voting is by secret ballot.

111. Appointments to the civil service are made by the Governor who is advised by the Public Service Commission: such appointments are completely independent of Ministers.

Article 26

112. The rule of law is a fundamental principle:

"It means the absence of arbitrary power; effective control of and proper publicity for delegated legislation, particularly when it imposes penalties; that when discretionary power is granted the manner in which it is exercised should as far as is practicable be defined; that every man should be responsible to the ordinary law whether he be private citizen or public officer; that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land." (Wade and Phillips, Constitutional Law, 8th Edition, pages 76 to 77).

It follows that no person could be deprived of the equal protection of the law except by express legislation of Parliament.

Article 27

113. There are no restrictions on the enjoyment by any group of persons of the rights as to culture, religion and language which are the subject of this Article, other than those such as are referred to in Article 22(2) of the Covenant relating to the right of association. Members of any group of persons are entitled to the same protection of the law as others. Although it is hoped that minority groups will ultimately be fully integrated into Gibraltarian society, integration is seen not as a flattening process of assimilation, but as equality of opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance.

ANNEX G

REPORT BY THE GILBERT ISLANDS UNDER ARTICLE 40(1)(a)

PART I

1. The Covenant does not itself have the force of law in the Gilbert Islands. Since 1967 the Constitution of the Gilbert Islands has embodied a comprehensive chapter protecting fundamental rights and freedoms of the individual. The fundamental rights and freedoms so protected broadly accord with those rights and freedoms which the Covenant seeks to recognize and, indeed, in many instances the terminology used in the Constitution and the Covenant is identical. Section 15 of the Constitution gives an individual the right to apply to the High Court for redress if he considers that any of the provisions of the Constitution relating to fundamental rights and freedoms have been contravened in relation to him.

2. So far as possible, this report relates the Articles of the Covenant to the appropriate section of the Gilbert Islands Constitution and confines commentary and explanation to possible areas of conflict.

PART II

Articles 2 and 3

3. Section 1 of the Constitution provides that every person in the Gilbert Islands is entitled to certain fundamental rights and freedoms whatever his race, place of origin, political opinions, colour, creed or sex.

Article 4

4. There has been no occasion for any derogation under this Article to be made in respect of the Gilbert Islands.

Article 5

5. The Gilbert Islands has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant or is specifically mentioned in this Report.

Article 6

6. Section 2 of the Constitution provides for the protection of the right to life. The law of the Gilbert Islands does not provide for the punishment of death in any circumstances. The Penal Code (Cap.8) provides that any person who is guilty of piracy shall be liable to be tried and punished according to the law of England but expressly provides that where according to the law of England that person would be liable to suffer the punishment of death he shall be sentenced to imprisonment for life.

Article 7

7. Section 5 of the Constitution provides that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

Article 8

8. Section 4 of the Constitution provides that no person shall be held in slavery or servitude or required to perform forced labour. The definition of "forced labour" is similar to that in Article 8.

Article 9

9. Section 3 of the Constitution provides for the protection of the right to personal liberty in terms that follow closely the provisions of Article 9. Further, the law of the Gilbert Islands provides for the issue of a writ of habeas corpus where any person is detained against his will other than by a lawful sentence or order of the court.

Article 10

10. The Prisons Ordinance (Cap 72) contains provisions that ensure that all prisoners are treated with humanity and with respect for the inherent dignity of the human person. Accused persons are in all cases confined separately from convicted persons, but they mix freely with convicted persons at meal times and recreational and washing periods. Further, accused persons are not required to work or wear prison uniform and are permitted unrestricted movements at reasonable times within the prison compound. Practical difficulties existing in the Gilbert Islands may make the segregation of accused juvenile persons and juvenile offenders from adults difficult but the situation arises rarely and has not created problems. The alternative would be cellular confinement which might well amount to solitary confinement.

Article 11

11. Gilbert Islands law does not permit the imprisonment of any person merely on the ground of his inability to fulfil a contractual obligation, but a person may be committed to prison for default in paying a debt under a court order.

Article 12

12. Section 12 of the Constitution provides for the protection of freedom of movement. The rights are subject to the restrictions set out in subsection (3), which includes powers to impose restrictions in the interests of environmental conservation as well as the other grounds set out in Article 12. This provision would assume importance if the Gilbert Islands wished to take measures to prevent continuing migration to the over-populated urban areas, as it may well wish to do. Section 12 also contains provision for the imposition of restrictions on the movement or residence of persons who do not belong to the Gilbert Islands. On Article 12(4), the Immigration Laws of the Gilbert Islands give all persons belonging to the Gilbert Islands automatic right of entry.

Article 13

13. The Deportation of Aliens Ordinance (Cap 78) makes no express provision for an alien to be allowed to submit his reasons against his deportation and to have his case revised and to be represented at such a review but the applicant would as a matter of administrative practice be permitted to be heard and to call witnesses.

Article 14

14. Section 8 of the Constitution contains provisions to secure that every person is afforded the protection of the law. The provisions of section 8 are substantially in accordance with Article 14, save that, having regard to the shortage of legal practitioners, there is no right for a person to have legal assistance assigned to him without payment, as envisaged by Article 14(3)(d). This part of the Article is already the subject of a reservation on the part of the United Kingdom in respect of the Gilbert Islands. It is unlikely that there will be private practitioners in the Gilbert Islands for a substantial period. The law of the Gilbert Islands does not provide for the payment of compensation in accordance with Article 14(6), but ex gratia payments would be made. The Criminal Procedure Code (Cap 7) secures that everyone convicted of a crime has the right to his conviction and sentence being reviewed by a higher tribunal.

Article 15

15. Section 8(4) of the Constitution gives recognition to the right set out in Article 15.

Article 16

16. There are no circumstances in which a person may be deprived of the protection of the law.

Article 17

17. Section 7 of the Constitution provides for the privacy of the home and other property. Section 10 provides for freedom from interference with correspondence. Further particular intrusions may be the subject of specific actions in the courts. For example, an unauthorized entry on land or buildings is a trespass and an attack on a reputation may amount to a slander or a libel.

Article 18

18. Section 9 of the Constitution affords protection of freedom of conscience in very similar terms to Article 18. The Education Ordinance 1976 provides that if a parent of any pupil requests that such pupil be wholly or partly excused from attending religious instruction or any act of religious worship in a school the pupil shall be excused such attendance. In addition a teacher cannot be compelled to give or be present at a religious instruction or any act of religious worship if to do so would be against the dictates of his conscience.

Article 19

19. Section 10 of the Constitution affords protection of freedom of expression in much the same way as Article 19.

Article 20

20. Although the criminal law does not prohibit the distribution of propaganda for war as such, if the propaganda, or its manner of presentation, was such as to bring the Sovereign or Government into hatred or contempt, it might amount to an offence under the Sedition Ordinance (Cap 9) or the Public Order Ordinance (Cap 95).

Again, while the criminal law does not prohibit the advocacy of national, racial or religious hatred in the terms provided by the Article, advocacy of hatred may, in certain circumstances, give rise to an offence under the Sedition Ordinance or an offence under section 29 of the Public Order Ordinance or section 57 of the Penal Code.

Articles 21 and 22

21. Section 11 of the Constitution gives protection of freedom of assembly and association and, in particular, deals with the right to form or belong to political parties and trade unions. It should be noted, however, that section 11, and indeed section 10 mentioned in the commentary on Article 19, permit, in addition to the restrictions specified in Articles 19, 21 and 22, the imposition of restrictions upon public officers - to some extent therefore the rights of public officers under these Articles can be curtailed if it is considered that those rights are in conflict with duties that arise from the performance of their offices. In practice, however, the right of public officers to join a trade union is encouraged.

Article 23

22. Gilbert Islands law and custom recognizes the family - and in the case of custom the extended family - as the natural and fundamental group unit of society. The Marriage Ordinance (Cap 29) provides a simple procedure for men and women of marriageable age who wish to marry and the Native Divorce Ordinance (Cap 21) (and, so far as it applies, imperial legislation) provides that a marriage induced by duress or mistake shall give rise to grounds for divorce. Customary law, as reinforced by the Maintenance Ordinance (Cap 96) (which gives the court power to make a declaration that another person or persons shall be liable to maintain a person where it is satisfied that there is a legal or customary obligation to do so), makes provision for the protection of children in the case of dissolution of a marriage.

Article 24

23. Children enjoy a measure of protection by virtue of Gilbert Islands law - e.g. the Employment Ordinance (Cap 84) affords wide protection in the field of employment and the Penal Code (Cap 8) makes cruelty to children an offence. Further, customary law, and in particular the Lands Code and the law of succession, affords wide protection to children. The Registration of Births, Deaths and Marriages Ordinance (Cap 27) provides that the birth of every child shall be registered within 10 days and the nationality laws and section 16 of the Constitution give all children born in the Gilbert Islands the right to acquire a nationality.

Article 25

24. Sections 10 and 11 of the Constitution, already referred to, implicitly give persons the right to take part in the conduct of public affairs directly or through freely chosen representatives. Section 46 of the Constitution provides that the only qualification for elected membership of the House of Assembly shall be that the candidate is a British subject or a British protected person and has attained the age of 21 years. The Elections Ordinance 1977 and the Constitution provide for

four yearly general elections by universal and equal suffrage with votes cast in secret. Lastly, provisions inserted in the Constitution by virtue of the Gilbert Islands (Amendment) Order 1976 establishing a Public Service Commission are designed to ensure that all those who belong to the Gilbert Islands shall have access, on general terms of equality, to the public service.

Articles 26 and 27

25. Sections 1 to 15 of the Constitution and all that has been recited in the preceding paragraphs of this Report are illustrations of the principles set out in Articles 26 and 27. In particular, section 13 of the Constitution provides for protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed. It should be noted, however, that section 13(4) provides that the section shall not apply, inter alia, to any law so far as that law makes provision with respect to persons who do not belong to the Gilbert Islands.

ANNEX H

REPORT BY HONG KONG UNDER ARTICLE 40(1)(a)

Introduction

1. The International Covenant on Civil and Political Rights does not itself have the force of law in Hong Kong. The obligation assumed under Article 2(2), which leaves each high contracting party free to decide the method by which it gives effect to the rights recognized in the Covenant, is fulfilled there by the provision of safeguards of different kinds operating in the various legal systems concerned, independently of the Covenant but in full conformity with it.

2. The explanations provided in the present report are confined to the legal system of Hong Kong. The legal rules of that system follow the legal system of England and Wales and fall into two main categories - rules prescribed by legislation and rules to be deduced from the decisions of courts of authority. Those of the latter category are themselves derived from two sources - first, the common law proper (that is, the laws and customs which have received judicial recognition from early times) and, secondly, the interpretation of legislation. The legal rules concerning human rights and freedoms are not embodied in any one legislative instrument or in a series of such instruments. They derive both from legislation, in many fields, and from case law and, particularly because of the nature of the latter, cannot be succinctly and comprehensively enumerated. This report contains, however, short general explanations, article by article, or legal rules concerning the rights recognized in the Covenant, citing, where appropriate, the principal legislative enactments and administrative instructions in which the rules are embodied. (The full texts of these instruments are available to the Human Rights Committee.) The explanations in this report should not, therefore, be regarded as an exhaustive statement of the safeguards provided.

3. In instances where measures giving effect to the provisions of the Covenant in Hong Kong differ from those in England and Wales, brief descriptions of the Hong Kong measures are included in the relevant paragraphs of Part II of this report.

Article 2

4. The measures which give effect to the rights recognized in the Covenant are applied without distinction between individuals on any such basis as is mentioned in this article. Where appropriate they are described elsewhere in this report. Members of the disciplined services and persons detained in penal establishments are governed by special rules for the preservation of service and custodial discipline.

5. Although the law in Hong King does not confer a specific right of action in respect of violation of any basic rights or freedoms as such, prevention of the free exercise of the rights and freedoms set forth in the Convention will normally involve some unlawful interference with the person, liberty or property

of the victim for which the law provides a civil remedy or a criminal sanction. The fact that a defendant was acting in an official capacity affords no defence, and proceedings can be brought against public authorities (including in general, the Crown) as they can against private individuals. There are no restrictions on a person's right of recourse to the courts and legal aid is generally available for cases at District and High Court level for those who cannot afford to pay for legal assistance.

6. Under Article XXVI (9) of the Royal Instructions from Her Majesty to the Governor of Hong Kong, the Governor is not permitted, without the consent of the United Kingdom Government, to enact any legislation in Hong Kong whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable.

Article 3

7. The measures which give effect to the rights recognized in the Covenant apply equally to men and women.

8. Additionally, under the Married Persons Status Ordinance, which came into effect on 7 October 1971, the position of married persons of either sex was largely equated. The Ordinance consolidated a number of existing provisions and also contained additions and amendments to the law. Amongst these amendments were provisions abolishing all restraint upon anticipation and alienation, past or future, purporting to attach to the enjoyment of any property by a woman which could not be attached to the enjoyment of that property by a man. In addition, it was provided that a married woman, whether an infant or not, can appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she may execute or do.

9. The Intestates' Estate Ordinance, which came into effect in October 1971, has abolished the inequality between males and females in rights of succession to estates and gives a widow and a female child rights of inheritance on intestacy.

Article 4

10. No derogations under this Article have been made in respect of Hong Kong.

Article 5

Paragraph 1

11. Hong Kong has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant. Where appropriate, the sections of this Report dealing with the rights and freedoms concerned describe the limitations which have been placed on their exercise.

Paragraph 2

12. The safeguards which, in Hong Kong, give effect to the rights recognized in the Covenant exist independently of the Covenant which does not itself have the force of law. The absence of any rights from the Covenant or their restriction thereunder could not therefore be used as a pretext for derogating from any of the other fundamental human rights enjoyed by persons in Hong Kong.

Article 6

Paragraph 1

13. The right to life recognized in this paragraph is protected both by the criminal law and by the civil law. The taking of a person's life, save in certain exceptional conditions, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to murder, manslaughter or infanticide, according to the circumstances. The exceptional conditions include cases where the taking of life occurred:

- (1) in pursuance of a sentence of a court;
- (2) in exercise of the right of self-defence (provided that no more force is used than is reasonable in the circumstances);
- (3) in the prevention of crime, provided, again, that no more than reasonable force is used.

14. If death is caused by a negligent act or by an intentional and unjustified act, it is a wrong against the deceased, and his personal representative can, by virtue of the Law Amendment and Reform (Consolidation) Ordinance (Chapter 23), bring an action in tort (i.e. civil wrong) against the person whose act caused the death or against the latter's employer if the act was carried out in the course of that person's employment.

15. The above-mentioned provisions of the criminal law (and probably also those of the civil law) do not apply in relation to unborn children. However, an attempt to procure an abortion will generally constitute an offence under section 46 of the Offences Against the Person Ordinance (Chapter 212), punishable with life imprisonment, unless authorized under section 47A of that Ordinance. This section provides for the medical termination of pregnancy, under prescribed conditions, where two registered medical practitioners are of the opinion that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated.

Paragraph 2

16. The sentence of death can be passed only for murder, treason and piracy with violence. The penalty can only be carried out pursuant to a final judgment given by a Competent Court.

Paragraph 3

17. Pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, section 9A of the Offences Against the Persons Ordinance (Chapter 212) provides that genocide is an offence punishable with imprisonment for life if the offence consists of the killing of any person, or, if not, with imprisonment of not more than 14 years.

Paragraph 4

18. In those cases where a person may be sentenced to death, he may petition for the commutation of his sentence. A pardon or commutation of sentence may be granted in all cases in the exercise of the prerogative of mercy.

Paragraph 5

19. Judgment of death cannot be passed upon any person who, at the time of the offence, was under the age of 18, nor may it be passed upon an expectant mother. (Criminal Procedure Ordinance (Chapter 221) sections 70 and 77).

Article 7

20. The right not to be subjected to torture or to other forms of ill-treatment or punishment is protected both by the criminal law and by the civil law. Any use of force against a person, save in exceptional circumstances or as specifically sanctioned by the law, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to assault or battery. The exceptional circumstances include cases where the use of force occurs:

- (1) in self-defence or the defence of property, provided that no more force is used than is necessary for the purpose;
- (2) in the prevention of crime or in the lawful arrest or detention of an individual, provided that no more force is used than is reasonable in the circumstances;
- (3) in the course of the lawful correction of a child by its parent or of a pupil by its teacher, provided that the correction is reasonable and moderate considering the age, health and sex of the child.

21. For a limited number of offences a court may order a male offender to be punished by caning (Corporal Punishment Ordinance (Cap 222)). Such punishment is limited in the case of an offender:

- (a) below the age of 14, to 6 strokes;
- (b) between 14 and 17, to 12 strokes; and
- (c) of or above 17, to 18 strokes.

22. Rules or Regulations made under the Prisons Ordinance (Cap 234), Detention Centres Ordinance (Cap 239) and Training Centres Ordinance (Cap 280) also contain powers to punish male inmates for disciplinary offences by caning. In no case are more than 18 strokes permitted and caning is carried out under supervision with medical advice.

23. A person who has been ill-treated may bring an action in tort for damages against the person or persons who, it is alleged, were responsible for the assault. If the assault was committed by a person in the course of his employment the action would lie both against that person and against his employer. And in a case where it was not possible to identify which of several employees was responsible for an assault, an action for damages could still be maintained against their employer.

24. Apart from these general provisions further rules have been adopted to ensure the protection of the individual in particular circumstances. For example, in addition to their liability to prosecution for any criminal offences they commit, police officers are liable to be dealt with in internal disciplinary proceedings for any infringement of the Police (Discipline) Regulations 1977. Under these regulations a police officer guilty of unlawful or unnecessary exercise of authority resulting in loss or injury to any other person or to the Government may be punished. Such punishment can range from a reprimand or a fine to dismissal from the force.

25. A criminal or disciplinary offence committed by a police officer against a private person may come to light through a complaint made by that person or someone acting on his behalf. Police General Orders provide a system of enquiry into complaints against the Police Force or a member of the Force. Under these Orders a "Complaints Against Police Officer" is established under the command of a Senior Superintendent of Police. Recently there has been established a "UMELCO Police Group", which is a committee of Unofficial Members of the Executive and Legislative Councils, whose responsibilities are to:

(a) monitor and, where it considers appropriate, to review the handling by the Police of complaints by the public;

(b) to keep under review statistics of the type of conduct by Police officers which lead to complaints by members of the public;

(c) to identify any faults in Police procedures which lead or might lead to complaints; and

(d) when it considers appropriate, to make recommendations to the Commissioner of Police or, when considered necessary, to the Governor.

Article 8

26. There is no slavery, servitude or forced labour, as defined in paragraph 3 of this Article as being against this Covenant, in Hong Kong.

27. Imprisonment with hard labour may not be imposed as a punishment for a crime. A convicted prisoner may, unless excused by the medical officer, be required to do useful work for not more than 10 hours a day and may be paid for his work at

approved rates (Prisons Ordinance Chapter 234 - Prisons Rules, Rules 38 et seq.). A detainee in a Detention Centre is required to undertake such work on instruction as required by the Officer-in-Charge up to a maximum of ten hours a day, unless excused on medical grounds. Such work shall involve physical effort as far as possible and no payment is made (Detention Centres Ordinance Chapter 239 - Detention Centres Regulations, Regulation 9). An inmate in a training centre is required to undertake occupational training, unless excused on medical grounds. Payment is made for such work on release from the Centre (Training Centres Ordinance, Chapter 280 - Training Centres Regulations, Regulation 12).

Article 9

Paragraph 1

28. Among the most important common law rights are liberty of the person and freedom from arbitrary arrest.

Paragraph 2

29. In general, an arrested person must be informed of the true ground of his arrest. If this is not done the person who effected the arrest, whether a policeman or a private person, may be liable for false imprisonment. This requirement turns on the basic proposition that a person is, prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reasons why it is claimed that restraint should be imposed. All summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him.

Paragraph 3

30. As a general rule a person taken into custody without a warrant must be brought before a court as soon as practicable. Whether the apprehension is with or without a warrant there must be no unnecessary or unreasonable delay in taking the person before a court.

31. Under the Criminal Procedure Ordinance (Chapter 221) Section 13, the court or judge may at any time on application by an accused person order such person released on bail subject to the imposition of such conditions as are likely to result in his subsequent appearance as required, or as are necessary in the interests of justice or the prevention of crime.

Paragraph 4

32. The remedy of habeas corpus, which puts an end to illegal confinement, defends the right of personal freedom. The writ of habeas corpus may be obtained by any person detained against his will, not by a lawful sentence or order of a court, on probable cause being shown in an affidavit. It may also be obtained by any person acting on behalf of the person detained. Unless the detention is shown to be lawful, the person detained will at once be set free; discharge under the writ is final and cannot be questioned.

Paragraph 5

33. An aggrieved party may take an action in damages for false imprisonment.

Article 10

Paragraph 1

34. The regulation and management of all penal establishments are governed by statutory rules made by the Governor in Council. In what they prescribe both for the conduct and responsibilities of staff at institutions and for the supervision and care of prisoners, the rules take full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

35. So far as adults are concerned, the Prison Rules (Cap 234, sub leg) make explicit provision for the physical welfare of prisoners and for the care of their physical and mental health.

36. The Commissioner of Prisons is subject to the direction of the Governor. All institutions are subject to visits by senior officers from the headquarters of the Prisons Department. Any magistrate has a statutory right to visit a prison to which his court commits prisoners. In addition, each penal institution is visited fortnightly by two Justices of the Peace who are appointed by the Governor.

37. The work of Visiting Justices is voluntary and unpaid and covers two main formal functions:

(a) it brings into the penal system an independent group of representatives of the local community to which during their visits any inmate may make a complaint or request;

(b) the regular visiting and inspecting of all parts of the institution, paying particular reference to the state of premises, the quality of the administration as it affects inmates, and the treatment - in its widest sense - which inmates receive, with a view to reporting and making recommendations to the Governor on any matter which they consider expedient. The Visiting Justices are required to inform the Commissioner of Prisons immediately of any abuse which comes to their knowledge.

38. To enable them to carry out their tasks the Prison Rules give Visiting Justices the right to enter all parts of the institution at any time, to examine its records and to talk to any inmate.

39. The Prisons Ordinance (Cap 234) (Section 8), as amplified by the Prison Rules (Rules 7 and 10), makes provision for the separation of female from male prisoners and for female staff to attend female prisoners.

40. The Prison Rules also contain specific provisions concerning particular aspects of prison treatment. For example, a prisoner may not be removed from association with other prisoners for the maintenance of good order and discipline or in his own interests, without the Superintendent informing the Commissioner of Prisons who will review each such order at the expiry of each calendar month's confinement and if he considers it desirable order that the prisoner returns to work in association (Rule 36).

41. If the Superintendent orders that a prisoner be put under restraint to prevent him injuring himself or others, he is required to give notice of this as soon as possible to one of the Visiting Justices on duty for the period and to the medical officer (Rule 67). The medical officer is required to say whether he concurs in the order and if he makes any recommendation the Superintendent is required to give effect to it. Again, the authority of one of the Visiting Justices and the Commissioner of Prisons is required for a prisoner to be kept under restraint for longer than 24 hours and the grounds for the restraint and the time during which it may be continued (which the rule states must not be longer than necessary) must be given.

42. Temporary confinement in a special cell is permitted for a prisoner who is refractory or violent, but not as a punishment nor may a prisoner be so confined after he has ceased to be refractory or violent (Rule 68).

43. The circumstances in which prisoners may be punished for offences against discipline are prescribed in detail in the Rules as are the offences themselves. The rules require that, where a prisoner is to be charged, the charge shall be laid as soon as possible, that the prisoner shall be informed of the charge as soon as possible and in any case before the charge is inquired into, and that the inquiry must begin not later than the next day (provided this is not a Sunday or public holiday). At the inquiry the prisoner must have the opportunity of presenting his own case. All adjudication must be conducted by the Superintendent. The punishments which may be awarded are prescribed in the rules. (They are: forfeiture of privileges, stoppage of earnings, separate confinement with or without punishment diet, forfeiture of remission of sentence. In addition unconvicted prisoners may lose certain of their special privileges.) The maximum period for which these punishments may be awarded are prescribed by the Rules. Any prisoner aggrieved by a punishment awarded by the Superintendent may appeal to the Commissioner of Prisons.

44. The code of discipline for prison officers is approved by the Governor under Rule 239 of the Prison Rules. It governs conduct of all members of the prison staff and details of those aspects of conduct which arise directly from their unique employment as prison officers. Similarly, because of the nature of the employment, strict rules of procedure are laid down for dealing with offences against discipline.

45. The use of force in dealing with inmates is governed by Rule 237 of the Prison Rules, and the code of discipline includes provision accordingly. With regard to the treatment of inmates:

Rule 239

Any officer of the Prisons Department or other person employed in the Prisons commits a disciplinary offence who -

- (h) (i) without proper authority communicates with any ex-prisoner or with a relative, or friend of any prisoner, or ex-prisoner,
- (ii) communicates with a prisoner for an improper purpose,
- (iii) allows any undue familiarity between a prisoner and himself, or any other person employed in the prisons,
- (iv) discusses his duties, or any matters of discipline or prison arrangement, within the hearing of a prisoner,
- (i) deliberately acts in a manner calculated to provoke a prisoner or
- (j) in dealing with an inmate uses force unnecessarily or, where the application of force to an inmate is necessary, uses undue force.

Superintendents do not have delegated authority to deal with charges involving the use of force, which have to be remitted to the Commissioner of Prisons for determination. Penalties under the code include dismissal.

46. In general only cases involving minor assault are dealt with within the Prisons Department. Prison Officers are of course liable to prosecution for any criminal offences, including assaults, committed whilst on duty, and it is usual to refer a case to the police for investigation where an inmate has clearly suffered bodily harm. Similarly, unless investigation shows that an allegation is clearly groundless, any case involving an allegation of indecent assault is referred to the police for inquiry.

47. It is also possible for inmates or ex-inmates to take out private summonses against staff for assault, although this is rare, and under certain conditions to institute civil actions against staff.

48. Prisoners have the right to petition the Governor, or see the Visiting Justices or a visiting officer of the Government Secretariat about any matter of prison treatment. (The Prison Rules require that their attention must be drawn to these rights and this is done by means of notices placed in prominent positions throughout institutions which also contain particulars of their other entitlements under the Rules.)

Paragraph 2(a)

49. Rule 190 of the Prison Rules requires that unconvicted prisoners shall be kept out of contact with convicted prisoners as far as this can reasonably be done. An unconvicted prisoner may be allowed to have, so far as is consistent with discipline and good order, any articles which were in his possession when arrested and are not required for the purposes of justice or suspected of being wrongly acquired by him. He may also have at his own cost such books, newspapers, writing materials or other means of occupation as are not considered objectionable. He may have food and drink sent in from outside the prison

and may wear his own clothing and have changes of it sent in. Work is optional, and if an unconvicted prisoner elects to work he receives payment for it. He may send and receive as many letters, and may receive as many visits as he wishes within such limits and subject to such conditions as the Superintendent may direct.

Paragraph 2(b)

50. Under the Juvenile Offenders Ordinance, Cap 226, a child or young person under the age of 16 who is brought before a court charged with an offence and is not released on bail is normally remanded to a place of detention, which includes a Remand Home under the administration of the Director of Social Welfare.

51. A young offender on being found guilty of an offence may be sentenced to imprisonment only when he is 14 years of age or above (Section 15(1)(1), Juvenile Offenders Ordinance, Cap 226).

52. As an alternative to imprisonment young offenders, after being the subject of a report as to suitability prepared by the Commissioner of Prisons, may be sentenced to detention in a training centre (period 6 months to 3 years) a detention centre (period 1 to 6 months) or if they are certified to be drug dependent to a drug addiction treatment centre (period 4 to 12 months). The latter type of custodial treatment being provided for adults as well as young offenders.

53. The object of training centres is to bring to bear every influence which may induce the inmate to lead a wholesome and useful life on release. Methods of training include vocational and educational classes, counselling and hobby groups, with strict discipline, all administered in a progressive system where inmates have to earn promotion in three grades. All inmates are released to useful employment or placement in school and are under the supervision, for a period of 3 years from date of release, of an Officer (After-care) of the Prisons Department. A breach of any conditions in the Supervision Order may result in a person under supervision being recalled for further training.

54. The detention centre programme offers an alternative for dealing with young offenders who have no deep-seated involvement in crime or triad societies (secret criminal organizations originating in China and existing in Hong Kong, South East Asia, and possibly also in other parts of the world where there are Chinese communities). The programme is very demanding, and is composed of strict discipline and hard work, supplemented by remedial education and counselling. As for training centres the system is progressive with 3 grades. The period of aftercare supervision is 12 months from date of release with recall again as a deterrent to further deviant behaviour.

55. Drug dependants in the drug addiction treatment centres undergo withdrawal under medication, and then participate in a work-counselling-education programme. Release is always to employment, or placement in school in the case of a young person who has so chosen, and the period of after-care is 12 months from date of release.

56. These and other methods of dealing with young offenders under the control of the Director of Social Welfare result in only a limited number being admitted into a prison. There is a special correctional institution to accommodate male young prisoners where the programme provides for them to follow a half day vocational training and half day education programme. Where it is necessary for a young prisoner to be admitted into an adult prison, they are separated from the adults.

Paragraph 3

57. In addition to imprisonment there are three forms of custodial sentence established under the Laws of Hong Kong - drug addiction treatment centres, training centres and detention centres, the latter two being for young offenders (14 years of age to under 21) with a section of the detention centre for young adults (21 years of age to under 25). As already described under paragraph 2(b) confirmed drug addicts may be sentenced to a period in a drug addiction treatment centre. The purpose of these centres as stated in the preamble to the Drug Addiction Treatment Centres Ordinance is to provide for the cure and rehabilitation of persons found guilty of criminal offences who are suffering from addiction to a dangerous drug. Likewise the training centres are to provide for the training and reformation of young offenders.

58. Where there are areas in the general treatment and the provision of assistance and services for the rehabilitation of prisoners which have not been covered in detail by an ordinance or subsidiary legislation the Commissioner of Prisons issues standing orders which are binding on all prison officers and other persons employed in the Prisons Department. These are more specific in nature and some sections prescribe the types of services for prisoners, and the standards required. For example Standing Orders 556-568 provide a classification and categorization mechanism contributive to the maintenance of good order and the facilitation of training and rehabilitation. As to services for prisoners Prison Rule 38A, Regulation 12 of the Drug Addiction Treatment Centres Regulations 1974 and Regulation 14 of the Training Centres Regulations, 1964 require that education classes are provided for offenders, and Standing Order 27 for the Training Centres further ensures that inmates attend educational and vocational classes and are provided with books and classroom equipment. Standing Order 756 makes provision for offenders who are deemed fit by the Medical Officer to attend physical education classes. So as to assist reintegration into society and facilitate rehabilitation provisions are also included in the Training Centres Ordinance, Detention Centres Ordinance and the Drug Addiction Treatment Centres Ordinance, for a period of supervision and after-care after an inmate's release from a centre.

Article 11

59. Under Order 49B of the Rules of the Supreme Court (Cap 4, sub leg), a debtor can be committed to prison for a maximum period of 1 year upon the application of the judgment creditor for non-payment of the judgment debt due.

60. The Code provides, however, that at any time the person so imprisoned may make written application for his discharge giving a full account of all his property: such application shall forthwith be brought to the notice of the court and the debtor, upon the hearing of the application, shall be discharged unless "the judgment creditor shall make proof that the judgment debtor's inability to satisfy the judgment is attributable to unjustifiable extravagance in living or that the judgment debtor, for the purpose of avoiding payment of the debt, has wilfully concealed property or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith".

61. The provisions exist not for the purpose of punishing a person who, due to no fault of his own, cannot pay his debts, but as a deterrent against that type of person who chooses to live in extravagance at the expense of his creditors or, alternatively, seeks to evade payment of his debts by wilfully concealing, or fraudulently disposing of, his assets.

Article 12

Paragraph 1

62. Hong Kong law does not generally permit any interference with the right of a person lawfully within Hong Kong to liberty of movement and freedom to choose his residence within Hong Kong.

Paragraph 2

63. Hong Kong law does not generally permit any interference with the right of a person to leave Hong Kong. Any unlawful interference with that right could be restrained by application for a writ of habeas corpus or proceedings for false imprisonment or certiorari, as appropriate.

Paragraph 3

64. Restrictions on the rights in paragraphs 1 and 2 of this Article occur mainly in cases of arrest and detention which are dealt with in relation to Article 9 of the Covenant.

65. The Prevention of Bribery Ordinance (Cap 201) provides that a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under that Ordinance may be required by a Magistrate to surrender any travel document in his possession.

66. The Inland Revenue Ordinance (Cap 112) provides that a judge may by order restrain from leaving Hong Kong any person who has not paid, or furnished security for payment of any tax due from such person.

67. Also, under Order 44A of the Rules of the Supreme Court, the Court may require a Defendant who is shown to be about to leave Hong Kong to furnish security for the amount of any judgment that may be given against him.

Paragraph 4

68. The Immigration Ordinance (Cap 115) confers the "Right to Land" on three categories of persons:

(a) a "Hong Kong believer"

- (i) a British subject born in Hong Kong;
- (ii) a British subject by naturalization in Hong Kong;
- (iii) a British subject by registration in Hong Kong under section 7(2) of the British Nationality Act 1948;
- (iv) a British subject who is or has been married to, or is the child of, a person covered by (i), (ii) or (iii) above.

(b) a "Resident United Kingdom believer"

- (i) a person who is a citizen of the United Kingdom and Colonies by virtue of his birth, adoption naturalization or registration in the United Kingdom, who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than seven years;
- (ii) the wife and child of a person covered by (b)(i) above who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than seven years.

(c) a "Chinese resident"

This is a person who is wholly or partly of Chinese race and who has at any time been ordinarily resident in Hong Kong for a continuous period of not less than seven years.

69. Under the law, the onus of proof of claiming such right to land lies on the person concerned. Persons under category (a), are exempt from deportation under any circumstances. The latter two categories are protected from being deported from Hong Kong, save in very limited circumstances.

Article 13

70. A reservation to Article 13 was made in respect of Hong Kong. Aliens lawfully in Hong Kong may be deported, by order of the Governor in Council, only if they have been convicted of a serious offence against the law or if the Governor in Council deems their deportation to be conducive to the public good.

71. There is no right to have cases reviewed and only in the case of aliens of Chinese race, who have at any time been ordinarily resident in Hong Kong for a continuous period of not less than seven years, is there a right to make representations prior to a deportation order being made.

72. The Governor may make a removal order against an alien requiring him to leave Hong Kong if he is an undesirable immigrant who has been ordinarily resident in Hong Kong for less than three years. There is no right of review or representation in such cases.

Article 14

Paragraph 1

73. Domestic courts and tribunals are open to all persons on an equal basis. Only certain minor distinctions in the procedural rights of litigants are made on grounds of their status. For example, an infant may only carry on proceedings by his guardian ad litem or some other person, who is called his next friend (Rules of the Supreme Court, Order 80).

74. All criminal proceedings are conducted in public, with the exception of cases involving public security (Official Secrets Act 1920, s 8(4)), cases heard in the juvenile courts from which the public, but normally not the press, are excluded (Juvenile Offenders Ordinance (Cap 226, s 3D)), and cases in which, on the ground of public decency, the judge has a discretion to close the court while evidence of a particularly intimate character is being given by a child or young person. In the trial of charges under the Official Secrets Acts 1911-1939, the court is only closed (if at all) during the hearing of such parts of the trial as the judge, in his discretion, deems desirable and the sentence must always be passed in public. Civil proceedings must also be conducted in open court, except in certain cases where press and public may be excluded on grounds of a kind contemplated in paragraph (1) of this Article.

75. Impartiality of all judicial proceedings is safeguarded by the rule of natural justice that no man may be judge in his own cause (nemo iudex in causa sua) and by the independence of the judiciary, which is free to administer the law under the protection of the law without fear or favour. If, for any reason, a real likelihood of bias can be established, the judgment is voidable. No inquiry is made whether any bias has in fact been shown; it is sufficient to prove that the judge has an interest in the proceedings. Trial by jury for serious criminal offences provides a further general safeguard against prejudice in the administration of the law. As regards the independence of the judiciary, High Court and District Court judges are removable from office only for misconduct and then only upon the advice of the Judicial Committee of Her Majesty The Queen's Privy Council.

Paragraph 2

76. It is a fundamental principle of the criminal law that an accused person is presumed innocent until proved guilty. The guilt of the accused must be proved beyond reasonable doubt, and the accused must be acquitted if there is any reasonable doubt as to his guilt. In general, the burden of proof is on the prosecution, and never shifts. In a very few cases, however, the persuasive burden is on the accused. It is for the accused to prove the defences of insanity and diminished responsibility; and in some cases statutes have placed the burden of proving certain facts or excuses on the defence.

Thus by statute (Crimes Ordinance (Cap 200)), a person charged with making or possessing an explosive substance must prove that he was doing so for a lawful object. There are also certain presumptions raised against persons in respect of whom certain facts have been proved in relation to the manufacturing, possession or trafficking in dangerous drugs under the Dangerous Drugs Ordinance (Cap 134). When the burden of proof is on the accused, it is sufficient for him to prove the exculpatory fact on a balance of probabilities. The burden of proof on the accused is thus never as high as that on the prosecution.

Paragraph 3(a)

77. Summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. A person arrested without warrant must be told the reason for his arrest; and a written copy of the charge against him is always given to him. Where trial is on indictment, the accused is also entitled to a copy of the information and to a copy of the indictment (a formal written accusation of the charge).

Paragraph 3(b)

78. The accused must, as a matter of natural justice, be given an adequate opportunity to prepare his defence. If the trial is due to take place before he has had such an opportunity he may apply to the Court for an adjournment. If the application is genuine, it must be granted; if it is not granted, the conviction is liable to be quashed on appeal. As regards facilities, in any trial on indictment it is the duty of the prosecution to inform the defence of the identity of their witnesses and of the nature of their evidence. Should any available relevant credible evidence be withheld, and subsequently discovered by the defence, an appeal can only result in the conviction being quashed; the Court of Appeal cannot order a new trial in these circumstances. In the preparation of his defence, the accused has the right to instruct a solicitor and counsel of his own choice.

Paragraph 3(c)

79. Whilst there are no statutory provisions setting down time limits between date of arrest or charge and date of trial, the Courts do accord priority to the hearing of criminal cases, especially those where the charge is of a serious nature or the accused is remanded in custody awaiting trial.

Paragraph 3(d)

80. In general a defendant has a right to be present at his trial, but the proceedings may in exceptional circumstances be continued in his absence if he voluntarily refrains from attending.

81. The right of an accused person to defend himself in person or to be represented by solicitor and counsel of his own choice is an accepted principle. It is the duty of the judge or magistrate to inform a defendant who appears unrepresented of his procedural rights and particularly of his rights to cross-examine witnesses for the prosecution and, at the close of the prosecution case, to give sworn evidence on his own behalf, to make an unsworn statement or to remain silent, to call witnesses and to address the court.

82. Legal aid is available in all criminal cases in the Court of Appeal and the High Court, and in the District Court to persons accused of an offence carrying a maximum penalty of 14 years or more imprisonment. It has been agreed, in principle, that legal aid will in due course be extended to all persons accused of any criminal offences in the District Court.

83. The power to grant legal aid is vested in the Director of Legal Aid under the provisions of the Legal Aid in Criminal Cases Rules made pursuant to the Criminal Procedure Ordinance (Cap 221). However in cases involving a capital charge a judge may grant legal aid and may exempt the accused from payment of contributions towards the cost of such legal aid.

84. In other cases an accused person to whom legal aid has been granted is required to make a contribution towards the cost of such aid unless his financial resources do not exceed certain financial limits. Free legal aid is available to those whose financial resources do not exceed those limits.

Paragraph 3(e)

85. The accused person, or his counsel if he is represented, has the right to question the witnesses of the prosecution and to call witnesses on his own account. The defence may secure the attendance of a person as a witness on behalf of the accused by the issue of a subpoena, which compels the person on whom it is served to attend a court.

Paragraph 3(f)

86. Where an accused person who is ignorant of the English language is being tried and is undefended, the proceedings must be interpreted for him. If he is defended, the proceedings should be interpreted except which he, or his counsel on his behalf, expresses a wish to dispense with the interpretation, and the judge thinks fit to permit the omission; but the judge should not permit it unless he is of the opinion that the accused substantially understands the proceedings. An accused person is not required to pay for the services of an interpreter.

Paragraph 3(g)

87. An accused person is in all cases entitled to make a plea of not guilty. Under section 51(1) of the Criminal Procedure Ordinance (Cap 221), when a person is arraigned on an indictment:

(a) he shall in all cases be entitled to make a plea of not guilty in addition to any special plea;

(b) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;

(c) If he stands mute of malice, or will not answer directly to the indictment, or pleads guilty to a charge of a capital offence, the court may order a plea of not guilty to be entered on his behalf, and he shall then be treated as having pleaded not guilty.

88. A defendant is a competent witness for the defence at every stage of criminal proceedings either on his own behalf or on behalf of any person who is tried with him. But he cannot be called as a witness except upon his own application and his failure to give evidence must not be made the subject of any comment by the prosecution (Criminal Procedure Ordinance (Cap 221) s 54)).

Paragraph 4

89. Juvenile Courts are established under the Juvenile Offenders Ordinance (Cap 226) and persons under 16 years of age must be dealt with by those courts unless the charge is one of homicide or in some cases where a juvenile is jointly charged with a person over 16.

90. A juvenile court is composed of a permanent magistrate specially appointed for the purpose, who may be advised as to sentence by 2 persons selected by him from a panel appointed for this purpose. A juvenile court must not sit in a room in which sittings of a court other than a juvenile court are held if a sitting of that other court has been or will be held there within an hour before or after the sitting of the juvenile court. The only persons who are permitted to be present in court are:

- (1) officers of the court;
- (2) parties to the case, their solicitors and counsel, witnesses and others directly concerned;
- (3) newspaper reporters (unless excluded);
- (4) other persons specifically authorized to be present.

No newspaper report or report by sound or television broadcasts of any proceedings in a juvenile court may reveal the name, address or school or include any particulars calculated to lead to the identification of any person under 16 who is accused or is a witness, and no picture of any such person may be published in a newspaper except by direction of the court. The parent or guardian of the accused may be required to attend the court at all stages of the proceedings and must attend at any stage where the court thinks it desirable, unless the court is satisfied that it would be unreasonable to require his attendance. The court must explain the substance of the charge in simple language, and in those cases where the accused is not legally represented and makes assertion the court must put such assertions to the witness in the form of questions. After there is a finding of guilt the court is required to receive the fullest possible information from a variety of sources.

Paragraph 5

91. Any person convicted of an offence on indictment may appeal from the High Court or District Court to the Court of Appeal against his conviction (Criminal Procedure Ordinance (Cap 221) s 82)). Appeal also lies against any sentence passed for an offence, unless fixed by law; against a verdict of not guilty by reason of insanity; and against the finding of a jury that the defendant was under a disability.

92. If an appeal against conviction is based upon any ground which involves a question of law alone, or the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact or a question of mixed law and fact, the appeal lies without leave; in any other case, the leave of the Court of Appeal is required (Criminal Procedure Ordinance (Cap 221) s 82(2)).

93. Appeal lies with leave to the Judicial Committee of Her Majesty's Privy Council from the Court of Appeal on an appeal to it. Leave cannot be granted unless the Court of Appeal certifies that a point of law of general public importance is involved in the decision and it appears to it or to the Judicial Committee that the point is one which ought to be considered by the Judicial Committee.

94. In the case of summary offences, there is a right of appeal under the Magistrates Ordinance (Cap 227) from a magistrates' court to a judge of the Supreme Court:

- (a) against sentence when the accused pleaded guilty; and
- (b) against conviction or sentence when the accused did not plead guilty.

Paragraph 6

95. There are no provisions conferring a right on a person convicted of a criminal offence but later exonerated to receive compensation from public funds for any loss or hardship he may have suffered.

96. However, a person may have a right to bring a civil action for damages against the person or authority responsible if criminal proceedings have been instituted maliciously and without reasonable cause. In the case of such a civil action damages are assessed and payment may be enforced by the courts according to the normal rules applicable in such cases.

97. Where, after a person has been convicted by a final decision of a criminal offence and, as a result of the emergence of fresh information, the conviction is found to be wrong, ex gratia payment out of public funds is normally made. This excludes acquittal in the normal course of trial and appeal, but applies in cases where the Governor, in the light of the fresh information, either grants a free pardon or refers the case to the Court of Appeal, and the Court either quashes the conviction or orders a retrial which results in an acquittal.

Paragraph 7

98. It is a long established principle of common law that a person may not be tried for a crime: (i) in respect of which he has previously been acquitted or convicted; (ii) in respect of which he could on some previous indictment have been lawfully convicted; (iii) if the crime is in effect the same or substantially the same one in respect of which (a) he has previously been acquitted or convicted, or (b) he could on some previous indictment have been convicted.

Article 15

99. The Hong Kong legislature is competent to enact ex post facto criminal legislation if it regards this as necessary, but there is a powerful presumption against its doing so, and there is almost certainly no case where a general criminal statute has created a crime retrospectively. It is a fundamental rule that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Ordinance, or arises by necessary and distinct implication. The position as regards the penalty attached to a crime is similar.

Article 16

100. There are no cases in which a person may be deprived of the protection of the law.

Article 17

101. Any power a public authority may have to interfere with a person's right to respect for his private and family life, his home and his correspondence must be provided by law. No public authority has any right to interfere with these rights other than those provided by law. Although there is no general statutory right to privacy, particular intrusions may be the subject of actions in the courts. For example, any unauthorized entry on land or buildings is a trespass which may be restrained by injunction and which will give rise to an action for damages.

102. Rights of intervention are only granted for specific purposes provided by the law.

Article 18

103. There are no restrictions imposed by law on freedom of thought, conscience and religion or on freedom to change religion or belief. Freedom to manifest one's religion or beliefs is restricted by law only to the extent that this is necessary to secure public safety, order, health or morals or the rights of others. Interference with any of these freedoms will normally constitute a civil or criminal wrong under the common law. There is no restriction on the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

104. The common law knows of no restrictions on the right to hold opinions; and it does not inhibit freedom of expression save in respect of statements which are in contempt of court, blasphemous, seditious, defamatory of another person, in breach of confidence or likely to provoke a breach of the peace. Any restrictions on freedom of expression and the freedom to receive and impart information other than these can result only from legal provisions enacted by or approved by the Hong Kong legislature in the public interest.

Examples of such statutory provisions are as follows:

- (a) the Official Secrets Acts 1911-1939 (which are concerned with the protection of Government information in the interests of national security, etc.);
- (b) the Public Order Ordinance (Cap 245) (the relevant portions of which are concerned with the prevention of disorder); and
- (c) the Objectionable Publications Ordinance (Cap 150) (which concerns the protection of morals).

Article 20

105. A reservation to Article 20 was made in respect of Hong Kong. Although criminal law does not in terms prohibit the distribution of propaganda for war, if the propaganda, or its manner of presentation, was such as to bring the sovereign government into hatred or contempt or generally to create disorder, discontent or dissatisfaction, it may amount to sedition, at least if there is an intention to provoke a breach of the peace. Or if the propaganda were intended or tended to cause a breach of the peace, and the language used were threatening, abusive or insulting, a prosecution may lie under the Crimes Ordinance (Cap 200) or the Public Order Ordinance (Cap 245).

106. While, again, criminal law does not prohibit the advocacy of national, racial or religious hatred in the terms provided by paragraph 2 of this Article, advocacy of hatred may, in certain circumstances, give rise to offences under the Crimes Ordinance or the Public Order Ordinance.

Article 21

107. There are no restrictions in Hong Kong on the right of peaceful assembly other than those prescribed by law in the interests of the community as a whole, and for the protection of the right and freedom of others. However, meetings and processions in public places are required to be licensed under the Public Order Ordinance (Cap 245).

Article 22

108. Part IVA of the Employment Ordinance (Cap 57) enables Hong Kong to comply with the International Labour Convention No. 98 (Right to Organize and Collective Bargaining Convention 1949). This ordinance confers various rights on employees, including:

- (a) the right to be and to become a member or an officer of a trade union registered under the Trade Unions Ordinance;
- (b) the right, whether he is a member or an officer of a trade union, to take part in the activities of the trade union; and
- (c) the right to associate with other persons for the purpose of forming or applying for the registration of a trade union.

109. There are no regular armed forces in Hong Kong other than those under the direct administration of the United Kingdom. Members of these forces, including locally enlisted personnel, are not permitted to join unions by virtue of the regulations which govern these forces. Members of the Royal Hong Kong Regiment and the Royal Hong Kong Auxiliary Air Force, both of which are part-time volunteer forces, are not prohibited from being members of unions in connexion with their full-time employment. However, members of the Royal Hong Kong Police Force are prohibited by section 8 of the Police Force Ordinance from union participation.

110. Members of the Hawker Control Force (which is a disciplined body under the administration of the Director of Urban Services) are required by section 19 of the Hawker Control Force Ordinance to obtain the prior consent of the Director before they may join any registered trade union. So far, no trade union has been established by members of the force. All other employees are free to join trade unions of their own choice.

111. No attempt has been or will be made by the Government to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in International Labour Convention No. 98.

Article 23

Paragraph 1

112. Legislation and the common law confer on the family the protection which it requires and deserves as the basic unit of society.

113. All marriages in Hong Kong are governed by the provisions of the Marriage Ordinance. Under this Ordinance, all marriages involve the voluntary union for life of one man and one woman to the exclusion of all others and marriages may be contracted only in accordance with the Ordinance in a marriage registry or a licensed place of public worship. The provisions of the Ordinance are designed to ensure, inter alia, that so far as is practicable a marriage entered into under its provisions may not subsequently be impugned. A breach of the Ordinance's provisions may attract criminal sanctions.

114. Prior to 7 October 1971, the Marriage Ordinance did not apply to non-Christian customary marriages duly celebrated in accordance with the personal law and religion of the parties but, under the Marriage Reform Ordinance, no such marriage may be celebrated in Hong Kong on or after that date. The Marriage Reform Ordinance provides for the preservation of status already obtained, for the post-registration of Chinese customary and modern marriages as defined in the Ordinance, and for the dissolution of such marriages.

115. During the subsistence of a marriage the rights of each spouse vis-a-vis third parties are protected, inter alia, by the common law action for loss of consortium if this was due to the defendant's breach of contract or tort. Under the Fatal Accidents Ordinance damages arising from death caused by the defendant's wrongful act may be recovered by the deceased's wife, husband, parent, grandparent, child, grandchild, brother, uncle, aunt and the issue

of a brother, sister, uncle or aunt. Under section 43 of the Offences Against the Person Ordinance it is an offence to take away or detain any child under the age of 14 years with intent to deprive its parent of its possession or to harbour a child knowing it to have been obtained in this way.

116. A marriage may be terminated only by the death of one of the parties or by a decree of dissolution, divorce or nullity pronounced by a court of competent jurisdiction, except in the case of the Chinese customary and modern marriages mentioned in paragraph 114 above, which may be terminated in accordance with the special provisions of the Marriage Reform Ordinance. Under the Matrimonial Causes Ordinance a divorce may be granted on the application of either spouse on the ground that the marriage has irretrievably broken down. Proof of certain facts, e.g. the respondent's adultery, will give rise to a presumption of breakdown. Under the Matrimonial Proceedings and Property Ordinance, a court may not, save in exceptional circumstances, pronounce a decree absolute of divorce unless satisfactory arrangements have been made for the welfare of any children of the marriage.

Paragraph 2

117. The right to marry derives from common law and the only general statutory restrictions on this right are those contained in the Marriage Ordinance. In order that a person should have capacity to contract a valid marriage in Hong Kong, the following conditions must be satisfied:

- (a) one party must be male and the other female;
- (b) neither party must be already married;
- (c) both parties must be over the age of 16; and
- (d) the parties must not be related within the prohibited degrees of consanguinity or affinity.

Paragraph 3

118. It is necessary for a valid marriage that the parties should consent to marry one another. If, therefore, there is a mistake as to the person with whom the marriage ceremony is performed or as to the nature of the ceremony itself, the marriage is void. However, when a person of full age and mental capacity goes through a ceremony of marriage there is a presumption of consent which can only be rebutted by clear evidence.

119. Fraudulent misrepresentation or concealment does not, apart from duress or mental disorder and apart from the concealment of pregnancy by another man or of a venereal disease in a communicable form, affect the validity of a marriage to which the parties freely consented with a knowledge of the nature of the contract. But if a person is induced to go through a ceremony of marriage by threats or duress, or in an unsound state of mind and without any real consent to the marriage, it is invalid. In all such cases the test of validity is whether there was any real consent to the marriage.

Paragraph 4

120. A number of steps have been taken in recent years to ensure equality of the rights and responsibilities of spouses. For example:

(a) the Matrimonial Proceedings and Property Ordinance gives the District Courts power to make orders during the subsistence of a marriage regarding maintenance of a spouse or child of the family. A child of the family is defined for this purpose as a child of both spouses or a child who has been treated by both spouses as a child of their family, and in either case the child may be legitimate, illegitimate or adopted;

(b) the Matrimonial Proceedings and Property Ordinance gives to a court hearing a petition for divorce, nullity or judicial separation wide powers to order appropriate financial provisions to be made by either spouse, including the transfer and settlement of property. The court is to exercise its powers so as to place any child of the marriage so far as it is practicable and, having regard to the financial resources and needs of the parents, just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of the parents had properly discharged his or her financial obligations and responsibilities towards the child.

As regards the protection of children, see the section of this Report dealing with paragraph 1 of this Article.

Article 24, Para. 2

121. The Births and Deaths Registration Ordinance provides that in the case of any child born alive in Hong Kong, it is the duty:

(a) of the father, or in the case of his death, illness, absence or inability, of the mother of the child, or

(b) in the case of death, illness, absence or inability of the father and the mother of the child, of any other qualified informant,

to give to the registrar, within 42 days after the date of such birth, information of the particulars required to be registered concerning the birth and to sign the register.

122. In the event of failure by the father, mother and any qualified informant to register a birth within 42 days, it is the duty of the registrar to procure by all means in his power the best and most accurate information respecting such birth and to cause the same to be registered.

123. The particulars required to be registered include the date of birth, sex, name of child if given at the time of registration, name and surname of father and name and maiden surname of mother, rank or profession of father and description and residence of informant. However in the case of an illegitimate

child, no person shall, as father of such child, be required to give information concerning the birth of such child, and there shall not be entered in the register the name of any person as father of such child, except at the joint request of the mother and of the person acknowledging himself to be the father, and such person shall in such case sign the register together with the mother.

124. "Qualified informant" for birth includes:

(a) the occupier of the house in which the child has been born or any person present at the birth;

(b) the person having charge of any public institution, convent or other charitable or religious institution where any child is born or any new-born child is admitted;

(c) Any person finding an exposed living new-born child.

125. Any person who commits any breach or infringement of any of the provisions of the Births and Deaths Registration Ordinance or fails to perform any duty imposed upon him by the said Ordinance, shall be liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months.

Article 25

126. A reservation to Article 25 was made in respect of Hong Kong. The circumstances of Hong Kong are special and preclude progress towards an elected Government.

127. Nevertheless the Government makes considerable efforts to ensure that the views of those affected by government policies and actions are taken into account in decision making. Membership of the Executive Council, the highest advisory body in Hong Kong, and the Legislative Council, the body responsible inter alia for passing legislation, debating government policy and actions, and either itself or through its committees, scrutinizing proposals for government expenditure, comprise both officials, i.e. government officers, who are members ex-officio or appointed and appointed unofficials i.e. members of the public. The Governor is Chairman of the Executive Council, which has in addition 14 members, six officials, five ex-officio and one appointed, and eight appointed unofficials. The Executive Council meets in private and its proceedings are confidential. He is also President and member of the legislative Council, which at present consists of 21 official and 24 unofficial members. The Legislative Council meets in public. The membership of the Legislative Council has been expanded considerably in recent years, and unofficial members are drawn from a far wider cross-section of the community than previously. This is a process which may be expected to continue.

128. Unofficial members also have their own administrative organization, which assists them in matters related to their membership of the Councils and in carrying out a wide range of ombudsman type functions, largely related to dealing with complaints from the public about the working of the official machine.

129. Unofficial members act as general watch dogs over the interests of an increasingly large cross-section of the Hong Kong public.

130. There is also an Urban Council in Hong Kong, responsible for a range of cultural and recreational matters, for parks, playgrounds, libraries, restaurant licensing, certain public health matters, street cleaning and refuse collection. The Urban Council has a large degree of autocracy within its areas of responsibility. It is comprised entirely of unofficial members, 12 appointed and 12 elected by the public, with an unofficial chairman.

131. In addition the Government is served by a comprehensive network of more than 100 advisory committees. These committees, some of which are statutory and permanent, some less formal, normally comprise official and unofficial membership and cover the whole range of government activity. They are a distinctive feature of the Government of Hong Kong.

132. Practically all government departments and areas of activity are assisted by advisory bodies of one sort or another. Advisory bodies may be based on the common interests of a particular locality, as in the case of Mutual Aid Committees, or the Rural Committees in the New Territories, or a particular industry, such as the Textiles Advisory Board, or deal with a particular area of community concern, such as the Action Committee against Narcotics, or of government activity, such as the Transport Advisory Committee. Other examples of such bodies are the Board of Education, Medical Development Advisory Committee, Social Welfare Advisory Committee, Labour Advisory Board, and Trade and Industry Advisory Board.

133. The Government also devotes considerable efforts, through the Government Information Services and the media, to the task of ensuring as far as possible that the reasons of its policies and actions are understood, in advance, and that they take into account the views of those affected.

134. Any person with suitable qualifications and experience, subject in some cases to their being British subjects, living in Hong Kong is eligible for appointment to the committees or councils advising or otherwise assisting the government, and outlined in general terms above, or to otherwise take part in public affairs.

135. Access to the public service on appropriate terms is available on general terms of equality to all suitably qualified persons.

Article 26

136. The rule of law is a fundamental principle in Hong Kong.

"It means the absence of arbitrary power; effective control of and proper publicity for delegated legislation, particularly when it imposes penalties; that when discretionary power is granted the manner in which it is exercised should as far as is practicable be defined; that every man

should be responsible to the ordinary law whether he be private citizen or public officer; that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land." (Wade and Phillips, Constitutional Law, 8th Edition, pages 76 to 77.)

It follows that no person could be deprived of the equal protection of the law except by express legislation.

Article 27

137. There are no restrictions in Hong Kong on the right of any group to practice and profess their own culture, religion or language.

ANNEX I

REPORT BY MONTSERRAT UNDER ARTICLE 40 (1) (a)

PART I

The Constitution and Elections Ordinance 1952 (Cap. 153) of the Revised Laws of Montserrat 1959 and the Montserrat Letters Patent 1959 provide in general for the protection of civil and political rights in the colony.

PART II

Article 1

1. There is freedom to pursue further this right if the people of the territory desire.
2. and 3. There are no known barriers in the way to the enjoyment of these rights and the indications are that every encouragement would be readily forthcoming from the metropolitan country should the local people decide on attaining full independence.

Article 2.

1. There is no legislation in the territory discriminating against anyone by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. In general effect is given to the rights referred to by the ordinary law of the land.
- 3 (a). The principle of equality before the law is adhered to in this territory thereby providing an effective remedy by recourse to the courts.
- 3 (b). The necessary machinery is available to enable the rights of a Claimant to be determined.
- (c). The usual means of enforcement for such remedies is through the courts to which one has access.

Article 3

There is no discrimination by means of sex in the enjoyment of these rights in the colony.

Article 4

No derogations have been made in respect of Montserrat.

Article 5

1. No such interpretation is envisaged having regard to the safeguards entrenched in the Constitution and the remedies which are available by resort to the courts.
2. The fundamental rights are inherent in the laws of the land and as such are being safeguarded whether with or without the presence of a covenant.

Article 6

1, 2 and 3. Everyone has the inherent right to life and no person may lawfully be deprived of his life but through the decision of a competent court upon the 'verdict of murder'.

4. Provision for such pardon is available within the framework of the Constitution.

5. Sentence of death is not allowed to be carried out below 18 years of age. Section 2 of the sentence of Death (Expectant Mothers) Act provides against the carrying out of the death sentence on pregnant women.

6. Abolition of capital punishment is reviewed by the competent authority from time to time.

Article 7

This right is protected within the framework of the law.

Article 8

1. Slavery, the slave trade and servitude are not allowed under the laws of Montserrat.

2. This country is committed by its obligations to Convention No. 105 - abolition of forced labour - to ensure that forced or compulsory labour is prohibited except in the limited categories in which it may be permitted.

Article 9

Protection is provided for these rights by both substantive and procedural laws.

Article 10

1. Apart from the protection provided by the general law of the land, the prison and judges rules give some additional protection in this respect.

2 (a). Accused persons are in general segregated from convicted persons if accommodation permits and are accorded treatment appropriate to the states of unconvicted persons.

2 (b). Accused juveniles are as far as possible kept from adults and their cases are speedily dealt with by a juvenile court in co-operation with a team of welfare and probation officers.

3. Every effort is made by the prison Welfare Committee to encourage the reforming of prisoners and the rehabilitation of them in the Community.

Article 11

Protection is given under the debtors act (Cap. 23) of the revised laws of Montserrat which abolished imprisonment for debts with a few exceptions.

Article 12

In practice these rights are observed.

Article 13

Where there has to be an expulsion this can only be done in accordance with the law and even then only when the safeguards usually provided by the courts have been exhausted.

Article 14

1. The rule of law in general provides, inter alia, for equality before the law, and the standards and practices necessary to ensure fair and just trials are traditionally observed.

2. Presumption of innocence is fundamental to criminal trials in the territory.

3. (a-c). These are all observed.

(d). In practice this is observed but the main category in which free legal assistance to persons is given is in the case of a trial for murder.

(e-g). These, in practice, and according to rules and procedures, are observed.

4. In practice account is taken of the matter referred to.

5. The hierarchy of the courts provides for such review.

6. An application may be made for compensation to the competent authority.

7. The conviction or acquittal would be a bar to any further trial or punishment for the same offence.

Article 15

Under the Interpretation Act 1889 there is, in general, presumption against legislation retrospectively affecting substantive rights.

Article 16

The law of the land provides for protection of this right.

Article 17

Effect is given to the requirements of this Article by the operation of the laws against unlawful imprisonment and the law of defamation, as well as by the procedures which have to be followed before search can be made of a person's property and the responsibilities of the Post Office for securing and delivering mail.

Article 18

All such rights are fundamental and are given protection under the law of the land.

Article 19

All these rights are enjoyed in the territory and are subject only to the safeguards necessary in their exercise to protect other rights.

Article 20

1. There is no legislation specifically providing for the prohibition against war propaganda but the laws in relation to incitement to riot and public order under the Public Order Act provides some protection.
2. The laws in relation to riot and public order provide protection in such cases.

Article 21

This right is fundamental and protection is given under the Public Order Act providing, inter alia, for peaceful assembly.

Article 22

This right is enjoyed and is given the necessary protection under the general law of the land. There is also a Trade Union Law (Cap. 322) of the revised laws of Montserrat specifically providing for freedom of association in respect of trade union.

Article 23

These rights are enjoyed in the Colony.

Article 24

All these rights are enjoyed and are given the necessary protection under various and relevant legislation including the Children and Young Persons Act, the Registration of Births, Deaths and Marriages Act, and the British Nationality Act.

Article 25

These rights are provided for in the Constitution and Elections Ordinance, 1952 (Cap. 153).

Article 26

The principle of equality before the law is long established in the territory and no one is being discriminated against on ground of race, colour, national or social origin, etc.

Article 27

All such rights are being enjoyed and protected in the colony.

ANNEX J

REPORT BY PITCAIRN UNDER ARTICLE 40(1)(a)

PART I

1. The International Covenant on Civil and Political Rights does not itself have the force of law on Pitcairn. The obligations assumed under Article 2(2) are fulfilled by the application to Pitcairn of the Common Law, the rules of equity and the statutes of general application as in force in England at the commencement of the Judicature Ordinance (Cap 2 of The Laws of Pitcairn, Henderson, Ducie and Oeno Islands 1971, Revised Edition), i.e. 27 October 1970. The relevant section is section 14 of that Ordinance. The effect of this is that where no local legislation exists the laws of England apply.

2. As in the case of the United Kingdom the legal rules concerning human rights and freedoms are not embodied in any single legal instrument or in a series of such instruments but are derived from legislation and from the general body of English case law which affords legal recognition of laws and instruments as they have been established in England. These rules and laws are supplemented by specific local legislation enacted by the Governor and contained in the 1971 Revised Edition of Laws of Pitcairn, Henderson, Ducie and Oeno Islands.

PART II

3. The legislative, administrative and other measures in force with regard to each right.

Article 1

4. No restriction can be imposed on the right of the inhabitants of Pitcairn to exercise their right of self-determination nor to freely determine their own political status and freely further their economic, social and cultural development.

Articles 2 and 3

5. The measures which give effect to the rights recognized in the Covenant are described in relation to each Article. They do not discriminate between individuals on any of the bases referred to in Article 2 other than to the extent referred to in this report.

Article 4

6. No necessity has arisen to invoke the right of derogation under this Article.

Article 5

7. No action has been taken aimed at the destruction of the rights and freedoms recognized by the Covenant or at their limitation to a great extent than at the date of application for the Covenant to Pitcairn.

Article 6

8. The United Kingdom report applies equally to Pitcairn as a result of the application of English law to Pitcairn by section 14 of the Judicature Ordinance (Cap 2).

Article 7

9. Paragraphs 1 and 2 of the United Kingdom report also apply equally to Pitcairn.

Article 8

10. There is no slavery or servitude, nor any forced or compulsory labour as described in this Article. Prisoners serving sentences of imprisonment are required to work for six hours a day on each day other than the Sabbath day at such work as may be appointed by the Warden in conformity with directions of the Island Council (Regulations 10 and 11 of Part IX of the Local Government Regulations made by the Island Council need the authority of section 7 of the Local Government Ordinance, Chapter 4 of the Laws) which work is excluded from the definition of 'forced or compulsory labour' by paragraph 3(c)(1) of Article 8 of the Covenant.

11. All male inhabitants of Pitcairn Island between the ages of 15 and 65 years are required to perform public work with the exception of certain officials, students and Ministers of Religion. This work forms part of the normal civil obligations of the inhabitants and is also excluded from the definition of the term 'forced or compulsory labour' by paragraph 3(c)(iv) of Article 8 of the Covenant.

Article 9

12. Paragraph 1 of the United Kingdom report on the application of paragraph 1 of this Article, applies equally to Pitcairn. Paragraph 2. Detailed provision is made in Parts IV and VII of the Justice Ordinance (Chapter 3 of the Laws) for the implementation of this Article. The only exceptions to release on bail are in the cases where the accused person is charged with the offences of murder or treason. The Supreme Court, however, may order the release on bail of a prisoner charged with these offences (see section 22 of the Justice Ordinance). No specific provision is made for the payment of compensation in the case of unlawful arrest or detention, but this aspect is fully covered by Parts IV and V of the United Kingdom report on this Article, which comments apply equally to Pitcairn.

Article 10

13. Provision is made in Part IX of the Local Government Regulations for the regulation of the Island prison. Under Regulation 13 the warder or any wardress is prohibited from inflicting any punishment or privation upon prisoners, 'but

shall treat them with kindness and humanity and shall listen patiently to and report their grievances to the Island Magistrate'. No provision is made for the segregation of accused persons from convicted persons as no accused person has been detained in custody nor is it likely to occur. Provision is made for the segregation of male and female prisoners. (See Regulation 4 of Part IX of Local Government Regulations). By section 33 of the Justice Ordinance, imprisonment of children, i.e. persons under the age of 15 years, is prohibited. (For the definition of a 'child' see section 2 of the Interpretation and General Clauses Ordinance, Cap 1 of the Laws). No prison offences are dealt with by the prison authorities but are triable before the Island Court and carry a maximum penalty of 4 dollars Australian or 8 days imprisonment. (See Regulation 21 of Part IX of Local Government Regulations).

Article 11

14. No imprisonment is permitted on the ground of inability to fulfil a contractual obligation by section 52 of the Justice Ordinance. Imprisonment may only be ordered for non-payment of money payable under a court order and then only when the Island Magistrate is satisfied that the person imprisoned is able to pay but will not.

Article 12

15. No restrictions are placed on the right of liberty of movement or freedom to choose a place of residence. The right to enter Pitcairn is confined to public officers, and to any person who is a British subject, a British protected person or a citizen of the Republic of Ireland, and who belongs to the Islands either by virtue of birth or seven years continuous residence in the Islands or has obtained the status of a naturalised British subject whilst ordinarily resident in the Islands or is the wife or child of any such person. (See section 8 of the Landing and Residence Ordinance (Cap 5)). No restrictions are placed on any person leaving the Islands.

Article 13

16. There is no provision by law for the expulsion of aliens who are lawfully in the Islands but there is provision (see section 6 of the Landing and Residence Ordinance) for the expulsion of persons who are unlawfully in the Islands either by virtue of their having landed in the Islands in contravention of the provision of the Landing and Residence Ordinance or have failed to comply with any of the conditions of any licence or permit allowing them to enter the Islands.

Article 14

17. The procedures for the conduct of trials and appeals are contained in Parts IV and VII of the Justice Ordinance (Cap 3 of the Laws), and are in conformity with the requirements of this Article. These provisions, coupled with the application to Pitcairn of English law of general application, effectively meets all of the requirements of the Article except that, as there

are no legal practitioners on the Islands or within a practicable distance from them, it is not possible to assign legal assistance to accused persons. It is emphasized that the jurisdiction of the Island Court is limited to purely local offences and carry very low penalties. It is also pointed out that both the prosecution and defence are without the benefit of legal assistance.

18. There is also no specific provision for the payment of compensation but as indicated above, the application of English law by section 14 of the Judicature Ordinance the same remedies are available as in England, by way of civil action for the recovery of damages in cases where criminal proceedings have been instituted maliciously or without reasonable cause. The administrative procedure for the making of ex gratia payments out of public funds will also apply.

Article 15

19. The position is the same as in the United Kingdom as described in the United Kingdom report. An additional safeguard is contained in section 5(5) of the Pitcairn Royal Instruments 1970 which prohibits the Governor from making any law inconsistent with any treaty obligations unless the operation of that law is suspended until the signification of The Queen's pleasure thereon.

Article 16

20. The position is the same as in the United Kingdom, namely that there are no cases in which a person may be deprived of the protection of the law.

Articles 17 and 18

21. The position is the same as under the Common Law of England, as described in the United Kingdom report and applied by section 14 of the Judicature Ordinance.

Article 19

22. No restrictions are imposed on the right to hold opinions or the right to freedom of expression.

Article 20

23. There are no express prohibitions in the terms of this Article. No practical need has arisen for the legislation in this regard and the only applicable law is that as in force in England on 21 October 1970.

Article 21

24. No restrictions are imposed on the exercise of the right of peaceful assembly which right is recognized by the application to Pitcairn of the Common Law of England by section 14 of the Judicature Ordinance.

Article 22

25. There are no restrictions on the right of freedom of association and the Trade Unions and Trade Disputes Ordinance (Cap 14 of the Laws) makes provision for the formation and registration of trade unions without restriction.

Article 23

26. The Marriage Ordinance (Cap 10 of the Laws) makes provision to facilitate marriages with the full and free consent of the contracting parties and lays down the formalities required for the solemnization of marriages. The only form of discrimination as between spouses is that the minimum age for marriage by a male person is set at 17 years and that for a female person at 16 years (see section 29(2) of the Marriage Ordinance). No provision is made in the local legislation for the dissolution of marriages. In the result, by the operation of section 14 of the Judicature Ordinance the law in force in England of 27 October 1970 is the applicable law. In effect only one divorce case has ever been held on the Island and that was in 1958 when the English divorce laws were applied.

27. Provision is made in section 69 of the Justice Ordinance (Cap 3 of the Laws) for the making of maintenance orders in favour of a married woman whose husband has deserted her or wilfully neglected or refused to maintain her or any children of the marriage such an order may be (a) for the maintenance of herself, (b) granting her legal custody of the children of the marriage, (c) maintenance for such children. Note however that under section 89 of that Ordinance adultery is a criminal offence and by section 69(iii) of that Ordinance no order may be made for the maintenance of a married woman who has been convicted of the offence of adultery under section 89.

Article 24

28. No specific local legislation exists for the protection of children with the result that the 'Children and Young Persons Act 1933' of the United Kingdom applies. See paragraphs 1-3 of the United Kingdom report on paragraph 10 of Article 24 of the Covenant.

29. Section 70 of the Justice Ordinance (Cap 3 of the Laws) makes specific provision entitling a person having the custody of a child to obtain an order against the father of the child for its maintenance in cases where the father is wilfully neglecting or refuses to maintain the child. Section 71 of that Ordinance makes provision for the mother of an illegitimate child to obtain an order against the father of that child for its maintenance.

30. Section 8 of the Births and Deaths Registration Ordinance (Cap 9 of the Laws) requires the parent of any child born in the Islands to give to the Registrar within two months of the birth of the child the particulars required to be registered concerning its birth. The term 'parent' is defined in section 2 of that Ordinance as meaning '(a) in the case of the birth of a legitimate child, the father or, if the father is dead or absent from the Islands, the mother or guardian of the child, (b) in the case of the birth of an illegitimate child, the mother or,

if the mother is dead, the guardian of the child'. The particulars required to be given include the place and date of birth, the name of the child, its sex and the particulars of both parents to readily enable identification of them. Failure by a parent to give the required information concerning the birth of a child is constituted a criminal offence by section 19 of that Ordinance.

31. The right of a child born in the Islands to acquire a nationality is covered by the British Nationality Act 1948 (see the United Kingdom report on paragraph 3 of this Article for the details).

Article 25

32. The right to take part in the conduct of public affairs is secured by the election of four elected officials known as 'Island Officers'. These are known as the Island Magistrate, the Chairman of the Internal Committee and two Councillors. These elected officials comprise the nucleus of the Island Council, which body, subject to the orders and directions of the Governor, is charged by section 7 of the Local Government Ordinance (Cap 4 of the Laws), with the duty 'to provide for the enforcement of the provisions' of that 'and all other Ordinances for the time being in force in the Islands and of any regulations made thereunder and may make, amend or revoke regulations for the good administration of the Island, the maintenance of peace, order and public safety and the social and economic benefit of the Islanders'. By sub-section 2 of that section the Council is specifically empowered to make regulations relating to 13 specific subjects, which regulations are embodied in the laws as the Local Government Regulations.

33. The other members of the Island Council are three nominated voting members of whom one is appointed annually by the Governor and the other two are appointed annually by the elected members of the Council in January of each year. There are also two non-voting members known as advisory members, one of whom is appointed annually by the Governor and the other is appointed annually by the other members of the Council at its first meeting in January of each year. A permanent official known as the Island Secretary is an ex officio member of the Council and is the Clerk to the Council. The Island Magistrate, who is elected every three years, presides over all meetings of the Council and in the event of his illness or other incapacity, the Chairman of the Internal Committee acts in the office of Island Magistrate. The Chairman of the Internal Committee and the two councillors are elected annually and hold office from 1 January until 31 December in each year.

34. Every native-born inhabitant of Pitcairn Island and every other person who has resided on Pitcairn Island for a period of three years or more is qualified to vote. Voting is by secret ballot and is compulsory. Failure to vote by an eligible elector is a criminal offence. All native-born inhabitants of Pitcairn Island over the age of 21 years and all other persons over that age who have resided on Pitcairn Island for not less than five years are eligible for election to the office of councillor. Only male persons over the age of 21 years

are eligible for election to the office of Island Magistrate or Chairman of the Internal Committee and persons who are not native-born inhabitants of Pitcairn Island are required to have resided on that Island for not less than 21 years. No person elected as an Island officer may be appointed to any public office and any public officer who is elected as an Island officer is required by section 3 of the Local Government Ordinance to forthwith resign from such public office.

35. There are no restrictions of any kind as to access to the Public Service.

Article 26

36. Equality before the law and equal protection of the law are fundamental principles of English law as applied to Pitcairn by the operation of section 14 of the Judicature Ordinance.

Article 27

37. There are no restrictions of any kind on the enjoyment by any group of persons of their rights as to culture, religion or language.

ANNEX K

REPORT ON ST. HELENA UNDER ARTICLE 40(1)(a)

Introduction

1. No report on St. Helena can be appreciated without considering St. Helena itself in its almost unique context, the salient features of which are as follows:

(a) The total land area is about 47 square miles, situated in an isolated position in the South Atlantic Ocean. Much of the land is barren volcanic rock, deeply fissured by valleys which are mainly inaccessible and provide no better soil than the hill sides.

(b) The total population is 5,147 of which some 1,925 are children.

(c) The Government has to support, directly or indirectly, every activity. Despite intense activity the Island is by no means self-supporting in agriculture, and there is no industrial output and no exports, but a high level of imports and a comparatively high cost of living. The Island relies very much on the United Kingdom Government for substantial grants-in-aid and the provision of generous development funds aimed at assisting self development, though there is very little prospect of self sufficiency. Government provides employment for some 70 per cent of the employable population.

(d) The community is well integrated, religious and law-abiding and the average Islander lives at a standard little below the standard of a United Kingdom worker, but with considerably less income.

(e) There is no harbour, no commercial bank, no airport and due to new shipping arrangements ships will call only six times a year northwards, and six times southwards, as from early 1978.

(f) Schooling to age 15 is compulsory, and there is a high standard of literacy and although a low level of achievement in higher education has been attained in the past, this is gradually improving.

Legal system

2. There are twelve elected members of the Legislative Council, who with the Government Secretary and Colonial Treasurer as ex officio members, are under the presidency of the Governor. Five of the elected members are chairmen of the five Council Committees - Agriculture and Natural Resources, Education, Public Health, Public Works and Services, Social Welfare. The chairmen are also members of the Executive Council which formulates official Government policy, and advises the Governor 'in Council'.

3. St. Helena has a considerable body of local law to deal with local conditions. The St. Helena legislation is supplemented by basic English law, which, as it stood on 1 April 1970, is in force in St. Helena "subject to, and save in so far as it is not inconsistent with any specific law" of St. Helena. Any later English legislation can be 'applied' to St. Helena if required.

4. In so far as civil and political rights are concerned, St. Helena is closely in line with England, and much English law applies in St. Helena.
5. Criminal law is administered by benches of magistrates selected on rota from a panel. The present panel comprises nine magistrates, of whom two are not Island born St. Helenians. The Chairman of the Magistrates is also the Sheriff of St. Helena, and he is St. Helenian. Sentences of imprisonment of over three months have to be confirmed by the non-resident Chief Justice.
6. More serious criminal cases (if any) are heard by the Chief Justice holding the Supreme Court. He normally visits the Island every nine months, but normally is concerned only with civil cases, in the absence of serious crime. The St. Helena Criminal Procedure Ordinance 1975 is closely modelled on English criminal procedure.
7. Non-contentious matters in the Supreme Court are dealt with by the Governor with the powers vested in him by the St. Helena Supreme Court Order 1969 (Statutory Instrument 1969/857 made by Her Majesty The Queen in Council).
8. The Covenant does not itself have the force of law in St. Helena. In the light of the background information given above, it will be appreciated that the legal rules concerning human rights and freedoms are not embodied in any one legislative instrument or series of instruments. They derive from local legislation, applicable English legislation, and from case law which has moulded the common law from early times, and interpreted legislation. This report contains therefore short general explanations only, Article by Article, of legal rules concerning the rights recognized in the Covenant, and where the position is substantially the same as in England, reference will be made to the United Kingdom report.

Articles 2 and 3

9. In favour of 'Islanders', there is a restriction on the free purchase of land within the Island. "Non-belongers" must obtain the Governor's licence before being enabled to purchase or lease land. Also, because of the permanent surplus labour position, "non-belongers" may not take up paid employment, nor operate certain types of businesses without a licence from the Governor in Council. There are entry restrictions on "non-belongers".
10. Other than as stated there are no distinctions such as those stated in these Articles of the Covenant. The right to vote in legislative council elections is given to all British subjects over the age of 21 years after:
 - (a) in the case of 'Islanders', 12 months residence; and
 - (b) in the case of "non-belongers", 2 years residence.
11. The law provides civil remedies or criminal sanctions in respect of the violation of individual rights. There are no restrictions on a person's right of recourse to the courts, but the community is so small that there are no qualified lawyers in private practice. The court staff give great assistance, and there is a reasonably developed system of "Mackenzie men" (unqualified laymen who will act on behalf of a litigant or defendant in criminal proceedings). Proceedings are available against an individual (whether acting in an official capacity or not) and against public authorities and, in general, the Crown, (in which case the proceedings are regulated by the English Crown Proceedings Act 1947).

Article 4

12. There has been no occasion for any derogation under this Article to be made in respect of St. Helena.

Article 5

13. Paragraph 1 St. Helena has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant. The sections of this report dealing with the rights and freedoms concerned describe the limitations which have been placed on their exercise.

14. Paragraph 2 As appears from the Introduction (Legal System) the safeguards which, in St. Helena give effect to the rights recognized in the Covenant exist independently of the Covenant which does not itself have the force of law. The absence of any rights from the Covenant or their restriction thereunder could not therefore be used as a pretext for derogating from any of the other fundamental human rights enjoyed by persons in St. Helena.

Article 6

15. The situation in St. Helena is exactly as it is in the United Kingdom.

Article 7

16. The situation in St. Helena is exactly as it is in the United Kingdom, as described in paragraphs 1 and 2 of the United Kingdom Report on this Article.

17. Apart from such general provisions, there is specific provision to protect persons liable to be at special risk, such as suspected and convicted persons.

18. The Police Force Ordinance 1975, and the Police Regulations 1976 provide for disciplinary proceedings for any infringement of police discipline, in addition to any civil or criminal action taken through the courts. Any police officer dealt with under disciplinary proceedings has a right of appeal, first to the Chief of Police (if appropriate) and to the Governor. The prison is controlled by an allocated police officer (see Article 10).

19. No confession obtained by any form of oppression is admissible as evidence against the person making such a confession.

Article 8

20. There is no slavery or servitude, nor any forced or compulsory labour as described in this Article. Labour is given freely under contract, and it is customary for service contracts to be terminable by either party on due notice; in cases of breach of contract the courts will not generally order specific performance. Any contract entailing servile obligations is illegal as contrary to public policy.

21. The right of action for false imprisonment ensures the protection of the individual from wrongful detention or confinement. The common law right to the writ of habeas corpus is available in all cases of alleged wrongful confinement, and the matter would be decided by the Supreme Court.

22. Slavery of any kind is illegal; hard labour may not be imposed in conjunction with any sentence of imprisonment. Convicted prisoners will normally work at useful labour, either inside or outside the prison. At present community service orders by a court are not possible, and in this small community are unnecessary.

Article 9

23. Common law rights in St. Helena are in accordance with this Article.

Article 10

24. The provisions of this Article are observed. In practice there are seldom more than two prisoners in the prison. In the year 1975/1976 the maximum prison population on any one day was five. The total accommodation is for 10 males and 3 females. Prison discipline is governed by the Gaols Ordinance and the Gaols Rules, 1960.

Article 11

25. Domestic law does not permit the imprisonment of any person merely on the ground of inability to perform a contractual obligation.

26. Civil imprisonment is only possible as the result of failure to comply with a court order. Where a judgment debtor is arrested in execution of a judgment for the payment of money and is brought before the court, the court must inform him that he may apply to be declared insolvent, and that he will be discharged if he does so, provided that he has not committed any act of bad faith regarding the subject of the application.

Article 12

27. So far as 'Islanders' of St. Helena are concerned the terms of the Article are fully observed; as they are for 'non-belongers', except in so far as for them there is a restriction under the Immigrants Landholding (Restriction) Ordinance, which requires such persons to obtain the licence of the Governor in Council to buy or lease land in the Island. This measure is necessary to protect Islanders' rights and prevent land speculation and inflation.

Article 13

28. This Article is observed under the Immigration Ordinance 1972, and regulations made thereunder.

Article 14

29. Subject to a reservation to Article 14.3(d) made in respect of St. Helena, this Article is observed, partly under applicable English law, and partly under the St. Helena Criminal Procedure Ordinance 1975.

30. As regards paragraph 3(d), there are no lawyers in private practice. There is, however, a developed system of 'Hackenzie men' and any person charged with a criminal offence can usually obtain lay assistance in the preparation and conduct of his defence. The courts are used to dealing with unrepresented defendants, and the court itself will assist an unrepresented defendant in ensuring that justice is done.

31. In view of the almost complete absence of serious crime, and the low incidence of petty crime, the position is considered to be perfectly satisfactory. The cost of the provision of free legal aid would be quite disproportionate to the benefit to be obtained, and the other priorities for the use of finance.

Article 15

32. The provisions of this Article are observed.

Article 16

33. The provisions of this Article are observed.

Article 17

34. Any unreasonable or unauthorized intrusion upon a person's land or privacy can be the subject of an action in civil law, or perhaps a criminal charge.

35. Powers of entry, normally after due notice, are given to certain public authorities, such as Public Health Authority, Electricity Authority and Water Authority, such powers being mainly concerned with public health and safety.

Article 18

36. The law in St. Helena is the same as the law of England and there are no restrictions imposed by law on freedom of thought, conscience and religion, and freedom to manifest one's religion or beliefs is restricted only to the extent as is necessary to secure public safety, order, health and morals and the rights of others. Interference with any of these rights will normally constitute a civil or criminal wrong under common or statute law.

37. Religious instruction is part of the school syllabus, but parents or guardians may elect that their children be excused from attendance at religious worship and instruction.

Article 19

38. There is no restriction and the right to hold opinions, or any inhibition of freedom of expression save in respect of the rights and reputations of others, protection of national security and public order and public morals. There is no press censorship.

Article 20

39. A reservation to Article 20 was made in respect of St. Helena. There is no specific prohibition of propaganda for war, or of advocacy of national racial or religious hatred, but necessary action could be taken under existing common or criminal statute law for actions tending to a breach of the peace. In such a small close-knit community such as St. Helena any further measures are quite unnecessary.

Article 21

40. The right of peaceful assembly has always been recognized and the only restrictions are those allowed by Article 21.

Article 22

41. There is complete freedom of association within the law. The English Public Order Act 1936 applies. The Trades Unions and Trade Disputes Ordinance facilitates the formation of trade unions and the exercise of trade union rights, and the only restriction on these rights is such as is permitted by the Article and the stated International Labour Organisation, by which St. Helena is bound.

Article 23

42. St. Helena law conforms to the provisions of this Article, and is substantially the same as English law save that for the marriage of a person below the age of twenty one years parental consent is required, and there is no power for a court to substitute its consent for the ungiven consent of the father. The Matrimonial Causes Ordinance 1961 provides that the law regarding divorce, etc., is the same as English law was before the enactment of the English Matrimonial Causes Act 1973. The English Matrimonial Proceedings (Magistrates Courts) Act 1960 applies in St. Helena.

Article 24

43. Children are fully protected in the terms of this Article.

Article 25

44. All citizens who are British subjects of the age of 21 years have the right and opportunity to vote, subject to residential qualification, which is:

- (a) in the case of an Islander, 12 months ordinary residence immediately preceding application for registration as a voter; and
- (b) in the case of a 'non-Islander', 2 years ordinary residence immediately preceding application for registration, during which 2 years he must have been physically present in St. Helena for an aggregate period of at least 18 months.

45. No person shall be entitled to be registered as an elector, or to vote, if, briefly:

- (a) he is, by virtue of his own act, under any acknowledgement of allegiance, etc., to a foreign power;
- (b) certified to be insane or adjudged to be of unsound mind;
- (c) under sentence of death, or under sentence of imprisonment of or exceeding 12 months;
- (d) disqualified from registration due to an election offence (corrupt practice, so adjudged by a court).

46. Any registered voter may stand for election to the Legislative Council but is not qualified to be elected if:

- (a) he holds, or is acting in, any public office;
- (b) he is an undischarged bankrupt;

- (c) holds or is acting in, any office connected with the conduct of any election or the compilation or revision of any electoral register; or if he has any of the disqualifications from being registered as a voter.

47. The Legislative Council elections are the only ones in St. Helena, as there are no local authorities, and (apart from the ex-officio members) the members of the Executive Council are appointed by the Governor from the elected members of the Legislative Council.

Article 26

48. All persons are equal before the law. The report on Article 12 is also relevant here.

Article 27

49. There are several religious minorities, and there are no distinctions or discriminations arising out of this.

General

50. The Island of St. Helena occupies a unique position both geographically and sociologically.

51. The local population have always had a very close connection with the United Kingdom, and there has been a free interchange of people. The only language is English, and every person here can be classed as 'very British' and very loyal to the Crown.

52. English law has always been partially applicable, and the principles and practice of English law are completely applicable, though often in a simplified form.

53. The present system of government is developing, and more local interest is being engendered, with a rise in the standard of education.

54. As a Dependency of the United Kingdom, and entirely reliant on United Kingdom support, St. Helena subscribes absolutely to the traditional and legal tolerance afforded to all people under the British flag, and adopts the International Covenant on Civil and Political rights in the letter and in spirit.

REPORT BY TURKS AND CAICOS ISLANDS UNDER ARTICLE 40(1)(a)

PART I

Civil and political rights are protected both by the Constitution of the Turks and Caicos Islands and by statute law and may be enforced through the courts usually by civil action or writs in the Supreme Court. In certain circumstances there may be a right of appeal to the Governor. There may be instances where the infringement of civil rights may amount to a criminal offence and in such circumstances the state comes to the aid of the citizen in protecting those rights.

In particular the Turks and Caicos Islands (Constitution) Order 1976 (SI 1976 1156) Part VIII sections 60 to 75 gives statutory effect to the fundamental rights and freedoms of the individual written into the Covenant and provides for the individual to assert those rights and to seek redress through the Supreme Court.

PART II

Articles 2 and 3

The measures which in the Turks and Caicos Islands give effect to the rights recognized in the Covenant are described in this Report in relation to each article. They do not discriminate between individuals on any such basis as is mentioned in Article 2.

Article 4

No derogation has been made in respect of the Turks and Caicos Islands.

Article 5

The Turks and Caicos Islands Government has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant and enshrined in the Constitution of the Islands. Any limitations are dealt with in the following paragraphs of this Report.

Article 6

1. The right to life is protected both by section 61 of the Constitution and by the criminal and civil law. The taking of a person's life save in circumstances set out in section 61(2) of the Constitution is a criminal offence amounting to murder, man-slaughter or infanticide according to circumstances. Civil remedies are available to relatives of persons whose lives have been taken through negligence.

2. The death sentence remains in force within the Islands in cases of murder. Under the Capital Punishment Procedure Ordinance (Chapter 17 of the Laws of the Islands) sentence of death cannot be passed on a woman who is pregnant nor, under

the Young Offenders Punishment Ordinance (Chapter 19), on a child or young person under the age of 16 years. A person sentenced to death may petition the Governor who under section 57 of the Constitution exercises the royal prerogative of mercy.

Article 7

1. The right not to be subjected to torture or to inhumane or degrading treatment or punishment is protected by section 62(1) of the Constitution and by the criminal and civil laws. Under the Young Offenders Punishment Ordinance (Chapter 19) a male child or young person under the age of 16 years may be whipped on conviction of any offence punishable by imprisonment without the option of a fine. This mode of punishment is reserved under section 62(2) of the Constitution.

2. Under the Police Disciplinary Code (Police Force Ordinance) (6 of 1970) it is a disciplinary offence to exercise unnecessary violence to any person including any detained person. This extends also to prison staff in relation to prisoners. A person may seek redress in the civil courts where physical force has been used against him unlawfully.

3. Confessions found by the Magistrate or Judge to have been obtained by oppression are inadmissible as evidence against the person making the confession.

Article 8

Protection from slavery and forced labour is given by section 63 of the Constitution. Save for the exceptions under this section all labour is given freely under contract terminable by either side on due notice.

Article 9

Protection from arbitrary arrest or detention is given under section 64 of the Constitution. No person may be arrested or detained save as authorized by law. A person arrested or detained must be informed immediately of the reasons for his arrest or detention and without unreasonable delay brought before a court for trial or to be bailed. Civil actions for false arrest or imprisonment may be brought by aggrieved persons. Apart from the remedy of a civil action section 64(4) of the Constitution provides an entitlement to compensation of any person unlawfully arrested or detained from the person responsible for the arrest or detention. "Person responsible for the arrest or detention" includes a Police Officer.

Article 10

1. There is only one prison in the Turks and Caicos Islands and regulations for its administration have been made under the Prisons Ordinance (Chapter 40). The number of prisoners averages less than ten. For this reason there are no separate institutions for women or juvenile prisoners. For the same reason provision for the separation of remand and convicted persons is not presently provided. In practice however because of the small prison population there is usually no difficulty in separating the various categories of prisoners detained in the prison. No female prison officers are permanently employed but are engaged temporarily as required.

2. A Prison Board is appointed annually by the Governor under the Prisons Ordinance, one member of which shall be a Justice of the Peace.
3. Under the Young Offenders Punishment Ordinance (Chapter 19) a child under the age of 14 years may not be sentenced to imprisonment. A young person under 16 years of age may be sentenced to whipping in addition to or instead of any other punishment. A court may order the child to be detained in an approved place other than in a prison but lack of facilities preclude such orders from being made.

Article 11

Under the Civil Procedure Ordinance (Chapter 30) sections 154-157 defaulting trustees having funds under their control or judgment debtors having the means to pay may be committed to prison for up to one year or six weeks respectively. Such imprisonment is essentially to punish the contempt of court which is involved in the non-payment of the debt: the imprisonment does not satisfy any decree or extinguish the debt.

Article 12

1. The right of persons to move freely in the Islands, the right to reside in any part thereof, the right to enter the Islands and immunity from expulsion is provided by section 70(1) of the Constitution. These rights are however limited by law to the extent provided under section 70(2).
2. The law of the Islands does not generally interfere with the right of persons to leave the Islands. Administrative regulations for the public service however require a public officer to obtain approval to do so.
3. The Immigration Ordinance (4 of 1971) controls the right of entry into the Islands and all persons who are not Belongers or Permanent Residents of the Islands as defined in the Ordinance are subject to immigration control.

Article 13

Any person other than a Belonger or Permanent Resident lawfully admitted in the Islands may be deported under the Immigration Ordinance (4 of 1971) if he --

- (a) has remained in the Islands contrary to the provisions of the Ordinance;
- (b) has been convicted of an offence and the Court recommends deportation;
- (c) is a person whose presence on the Islands is considered by the Governor to be undesirable.

A person in respect of whom a deportation order has been made may appeal to the Governor. There is no provision for legal representation in such cases although there is no reason to suppose that consent to such representation would be withheld. As recently as 1976 a local lawyer represented a Haitian in his appeal to the Governor against a deportation order.

Article 14

1. Provision to secure the protection of the law is enshrined in section 65 of the Constitution. The Courts are open to all and are public. All persons have the right to be represented by an Attorney or a friend.
2. ~~Comprehensive protection for the accused in criminal cases is written into~~ section 65(2) of the Constitution. There are no provisions for poor persons to be legally aided at the public expense but in practice few persons charged with any but minor offences go unrepresented. The rights of juveniles appearing before the Courts as offenders or witnesses are protected by the Juvenile Ordinance (Chapter 28). Because of the size of the community and limitations of finance available it is not possible to provide probationary services for young persons brought before the Courts.
3. A person convicted of a criminal offence but later exonerated may bring a civil action for damages against the responsible authority of criminal proceedings having been instituted maliciously and without reasonable cause. There are no legal provisions conferring a right in such cases to receive compensation from public funds for any loss or hardship suffered.

Article 15

The legislature is competent to enact ex post facto legislation though in practice this is not done in respect of penal legislation. No legislation may be enacted with retrospective effect unless the enactment itself specifically authorizes it. A further safeguard is that all enactments are subject to the overriding approval of the Secretary of State. There has been no such legislation in recent times.

Article 16

There are no cases in which a person may be deprived of the protection of the law.

Article 17

1. Any power a public authority may have to interfere with a person's right to respect for his private and family life, his home and his correspondence must be provided by law.
2. Statutory protection for the privacy of a person's home and other property is granted by sections 66(1) and 68(1) of the Constitution save only where the law provides otherwise in the limited circumstances set out in sub-section (2) of each of those sections.

Article 18

Freedom of conscience, thought and religion are enshrined in section 67 of the Constitution subject only to the limitations of public safety, public health or public morality and the need to protect equally the rights and freedoms of other persons.

Article 19

1. Apart from the common law freedoms inherited from the United Kingdom freedom of expression is protected by section 68(1) of the Constitution. This freedom is limited to the extent prescribed in sub-section (2) for reasons of public safety, public health or public morality, or for the purpose of protecting the rights, reputations and freedoms of other persons or in certain other instances affecting the public interest.

2. The regulations governing the conduct of public officers impose certain restrictions on their freedom to express opinions on matters of an administrative or political nature.

Article 20

All persons are free to distribute literature or propaganda unless such activity would tend to provoke a breach of the peace when distribution would be restricted by the Summary Offences Ordinance (Chapter 20) or the Suppression of Obscene Publications Ordinance (Chapter 26).

Articles 21 and 22

1. Freedom of peaceful assembly and association is protected by section 69 of the Constitution limited only by considerations of public order, public morality or public health and the need to protect the rights and freedoms of other persons.

2. Freedom to establish and to join trade unions is protected under the Trade Unions Ordinance (Chapter 63). Save for members of the police force public officers are free to join trade unions and to take part in their activities.

Article 23

The law of the islands derived as it is from United Kingdom law accords to the family the protection required by its position as the natural and fundamental group within society. The marriage Ordinance (Chapter 75) regulates the formalities required for the solemnization of marriage. The Legitimation Ordinance (Chapter 77) provides for the legitimization of children born before the marriage of the parents. Consideration is currently being given to improving the status of all children born out of wedlock.

Article 24

1. Although children enjoy a measure of protection through provision in a number of Ordinances, e.g. Juvenile Ordinance (Chapter 28), Offences Against the Person Ordinance (Chapter 21) there is no comprehensive legislation dealing with the custody charge or care of children.

2. A child born outside these Islands can derive Belonger status if its father or mother were born in the Islands.

Article 25

1. The right to take part in the conduct of public affairs is primarily secured by the elections of representatives to the Legislative Council. Subject to certain exceptions all Belongers over the age of 20 are eligible for election to the Council. Belongers who are excluded are public officers, the mentally ill, bankrupt persons under sentences of death or serving sentences of more than 12 months, persons who are parties to Government contracts, persons guilty of corrupt or illegal practices relating to elections or persons holding an office connected with the elections themselves (though such person may be appointed members). The persons entitled to vote as electors are, with certain exceptions Belongers of 18 years or over. Belongers who are disqualified from taking part in elections are the mentally ill, persons under sentence of death or serving a sentence of imprisonment for a term exceeding 12 months and persons guilty of corrupt or illegal practices relating to elections.

2. Section 33(3) of the Constitution provides that a general election shall be held at least once every four years.

3. Authority to make appointments to the public service is vested in the Governor under section 58 of the Constitution. In practice, with few exceptions, the Governor makes such appointments on the advice of the Public Service Advisory Board set up administratively. There is no discrimination on grounds of sex within the public service. People who are not Belongers are normally recruited to the service only where a local candidate is not available.

Article 26

The rule of law is a fundamental principle underlying the Constitution of the Turks and Caicos Islands upon which the Government of the country is based.

Article 27

There are no restrictions within the Islands on the enjoyment by any group of persons of the rights as to culture, religion and language other than those referred to in Article 22(2) of the Covenant relating to the right of association.